

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN J. AQUINO,)	
CHAPTER 7 TRUSTEE)	Case #1:21-cv-01355-JSR
By Its Assignee,)	
Convergent Distributors of Texas, LLC)	
)	
Plaintiff,)	
)	
v.)	
)	
ALEXANDER CAPITAL, LP)	
&)	
Its Managing Partners:)	
JOSEPH AMATO,)	
ROCCO GUIDICIPIETRO, and)	
NESA MANAGEMENT, LLC)	
)	
Defendants)	

**DECLARATION OF WILLIAM C. RAND, ESQ.
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 17

9-21-21 Dep. Testimony of J. Gazdak

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

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3 JOHN J. AQUINO,
4 CHAPTER 7 TRUSTEE,

5 By Its Assignee,
Convergent Distributors of Texas, LLC,

Plaintiff,

6

-against-

Case No.

7

1:21-cv-01355-JSR

8 ALEXANDER CAPITAL, LP.,

&

9 Its Managing Partners:

10 JOSEPH AMATO,
ROCCO GUIDICIPIETRO, and
11 NESA MANAGEMENT, LLC,

Defendants.

12 -----X

13 Held Remotely Via
Zoom Videocommunications

14 September 21, 2021
15 10:13 a.m.

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17

18 VIDEOTAPED DEPOSITION of the defendant,
19 Alexander Capital, LP, by JONATHAN GAZDAK, taken
20 pursuant to Order, before Kari L. Reed, a Notary
Public within and for the State of New York.

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22

23

24 Job Number. 798432

25

JONATHAN GAZDAK - 09/21/2021

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S :</p> <p>2</p> <p>3 JAN SCHLICHTMANN, ESQ.</p> <p>4 Attorney for Plaintiff</p> <p>5 P.O. Box 233</p> <p>6 Prides Crossing, Massachusetts 01965</p> <p>7 978.804.2553</p> <p>8 jan@schlichtmannlaw.com</p> <p>9</p> <p>10 HOLCOMB & WARD, LLP</p> <p>11 Attorneys for Defendants</p> <p>12 3455 Peachtree Road, NE, Suite 500</p> <p>13 Atlanta, Georgia 30326</p> <p>14</p> <p>15 BY: BRYAN WARD, ESQ.</p> <p>16 -and-</p> <p>17 HOLLY COLE, ESQ.</p> <p>18 -and-</p> <p>19 AARON WRIGHT, ESQ.</p> <p>20 404.601.2803</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23</p> <p>24 AMELIA SCHNEIDER, Videographer</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> 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<p>986</p> <p>987</p> <p>988</p> <p>989</p> <p>990</p> <p>991</p> <p>992</p> <p>993</p> <p>994</p> <p>995</p> <p>996</p> <p>997</p> <p>998</p> <p>999</p> <p>1000</p>	<p style="text-align: right;">Page 3</p> <p>1 F E D E R A L S T I P U L A T I O N S</p> <p>2</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED by</p> <p>5 and between the counsel for the respective</p> <p>6 parties herein that the sealing, filing and</p> <p>7 certification of the within deposition be</p> <p>8 waived; that the original of the deposition</p> <p>9 may be signed and sworn to by the witness</p> <p>10 before anyone authorized to administer an</p> <p>11 oath, with the same effect as if signed</p> <p>12 before a Judge of the Court; that an</p> <p>13 unsigned copy of the deposition may be used</p> <p>14 with the same force and effect as if signed</p> <p>15 by the witness, 30 days after service of the</p> <p>16 original & 1 copy of same upon counsel for</p> <p>17 the witness.</p> <p>18</p> <p>19 IT IS FURTHER STIPULATED AND AGREED</p> <p>20 that all objections except as to form, are</p> <p>21 reserved to the time of trial.</p> <p>22</p> <p>23 * * * *</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: Okay, we are on the</p> <p>2 record. The date is September 21st, 2021. The</p> <p>3 time is 10:13 a.m. This is the beginning of the</p> <p>4 deposition of Jonathan Gazdak in the matter of</p> <p>5 John J. Aquino, Chapter 7 Trustee, versus</p> <p>6 Alexander Capital, LP, et al. This deposition is</p> <p>7 being held via Zoom. The court reporter is Kari</p> <p>8 Reed. I am Amelia Schneider, a videographer on</p> <p>9 behalf of Litigation Services. This deposition</p> <p>10 is being videotaped at all times unless specified</p> <p>11 to go off the record.</p> <p>12 Would all present please identify</p> <p>13 themselves, beginning with the witness.</p> <p>14 THE WITNESS: Yes. Jonathan Gazdak.</p> <p>15 MR. SCHLICHTMANN: Jan Schlichtmann,</p> <p>16 attorney for the plaintiff.</p> <p>17 MR. WARD: The people with you, Jack?</p> <p>18 The people in the room with you, Jack, can you</p> <p>19 introduce Jack, please?</p> <p>20 THE VIDEOGRAPHER: They can hear you.</p> <p>21 MR. SCHLICHTMANN: Oh, they can?</p> <p>22 THE VIDEOGRAPHER: Yes.</p> <p>23 MR. SCHLICHTMANN: Yeah, yeah, I'm sorry.</p> <p>24 And with me participating, excuse me, observing,</p> <p>25 in the room is Jack Altschuller. He will not be</p> <p>participating, he is, however, observing. Jack</p>	<p style="text-align: right;">Page 5</p> <p>1 Altschuller, who's an attorney, yeah.</p> <p>2 MR. WARD: And Bryan Ward of Holcomb &</p> <p>3 Ward, and I represent the defendants. With me,</p> <p>4 I'll just go ahead and introduce them, remotely,</p> <p>5 are Aaron Wright and Holly Cole, also of Holcomb</p> <p>6 & Ward.</p> <p>7 THE VIDEOGRAPHER: Okay. Could the court</p> <p>8 reporter please swear in the witness and then we</p> <p>9 can proceed.</p> <p>10 JONATHAN GAZDAK, having been first duly sworn or</p> <p>11 affirmed, by the notary public, was examined and</p> <p>12 testified as follows:</p> <p>13 EXAMINATION BY</p> <p>14 MR. SCHLICHTMANN:</p> <p>15 Q. Good morning, Mr. Gazdak. I appreciate</p> <p>16 very much your agreeing to sit for this deposition.</p> <p>17 And, as you know, my name is Jan Schlichtmann, and I'll</p> <p>18 be obviously asking questions of you this morning.</p> <p>19 We're -- the agreement between counsel is</p> <p>20 that if there's any objections to any of my questions,</p> <p>21 your attorney will be making an objection and</p> <p>22 indicating the basis as necessary. In the event that</p> <p>23 we need to have a conversation between the attorneys,</p> <p>24 we're in agreement that we'll go off the record, have</p> <p>25 that conversation as it's needed, and if something</p>

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<p style="text-align: right;">Page 6</p> <p>1 needs to be said on the record we'll then put it on the 2 record.</p> <p>3 Also I have said to you earlier and I 4 want to now reaffirm it, is that at any time if I ask a 5 question and for any reason you would like to take a 6 break or you want to discuss it with your attorney, 7 feel free to do so and the plaintiff is not going to 8 make any inferences or make any references to the fact 9 that there was a break between the question and the 10 answer. The plaintiff is only interested that you're 11 comfortable with the answer. And as far as plaintiff 12 is concerned, the record need not even show the break 13 between the question and the answer. But I just want 14 you to know from our purposes we will not make any 15 reference to that break. I want you to feel very 16 comfortable with the answer that you give.</p> <p>17 If I ask anything that's, you don't, you 18 know, that you don't understand or isn't clear to you, 19 obviously feel free the ask me to clear it up, or if 20 you need to talk to counsel regarding it, again, feel 21 free to do that. No inferences will be taken regarding 22 that. All right, is that okay --</p> <p>23 A. Yes.</p> <p>24 Q. -- is that understood? Great.</p> <p>25 And we're going to have some technical</p>	<p style="text-align: right;">Page 7</p> <p>1 glitches here as we go through this thing. We'll all 2 be patient with each other.</p> <p>3 I want to make sure that you can see the 4 exhibit and you know exactly what we're pointing to. 5 If I point something out in an exhibit --</p> <p>6 MR. WARD: Ken, your audio has conked out 7 a little bit.</p> <p>8 MR. SCHLICHTMANN: All right. Let me 9 make sure this audio is good here. Sorry, is 10 that -- please let me know at any time, right, 11 that it dips at all. And Kari, right, are you 12 hearing me okay for every word?</p> <p>13 THE COURT REPORTER: I was -- I am. I 14 was about to --</p> <p>15 I'm not hearing your --</p> <p>16 THE COURT REPORTER: Yes, I'm good.</p> <p>17 Thank you, Mr. Ward, for saying that. I was 18 about to chime in.</p> <p>19 MR. SCHLICHTMANN: Okay, all right. So 20 any time, please. I don't want one golden word 21 to be missed, all right. All right, anyway, so 22 Kari has sworn in the witness and so we can start 23 the deposition.</p> <p>24 Q. Mr. Gazdak, could you state your name for 25 the record?</p>
<p style="text-align: right;">Page 8</p> <p>1 A. Yes. Jonathan Gazdak.</p> <p>2 Q. And are you presently employed?</p> <p>3 A. Yes.</p> <p>4 Q. And who's your employer?</p> <p>5 A. Alexander Capital.</p> <p>6 Q. And how long have you been employed by 7 them?</p> <p>8 A. Seven years.</p> <p>9 Q. So what year did you begin?</p> <p>10 A. 2014.</p> <p>11 Q. And do you know the month?</p> <p>12 A. May.</p> <p>13 Q. Or part of the year?</p> <p>14 A. May.</p> <p>15 Q. Okay. And what is your present position 16 with the firm?</p> <p>17 A. Managing director in investment banking.</p> <p>18 Q. And between May of 2014 when you first 19 started to now, has your position changed?</p> <p>20 A. No.</p> <p>21 Q. So you've been managing director 22 throughout the period of time that you've been 23 associated with Alexander Capital?</p> <p>24 A. Yes.</p> <p>25 Q. Could you describe for us briefly what</p>	<p style="text-align: right;">Page 9</p> <p>1 are the duties of a managing director, what were your 2 duties as you understood them as managing director?</p> <p>3 A. My duties are to find clients, companies 4 who are looking for investment banking services, and 5 then perform those services. Services include 6 financial advisory and/or sourcing companies that are 7 looking to raise capital.</p> <p>8 Q. And in order to perform those services do 9 you have to be licensed by any authority?</p> <p>10 A. I don't know.</p> <p>11 Q. Are you presently licensed by any 12 authority?</p> <p>13 A. Yes.</p> <p>14 Q. And what's that authority?</p> <p>15 A. FINRA.</p> <p>16 Q. All right. And what is the nature, is it 17 actually called a license or does it have some other 18 term of art or do you -- is it a license?</p> <p>19 A. I don't, I don't know.</p> <p>20 Q. Okay. And FINRA, you have -- you are 21 qualified -- are you qualified to do certain things 22 under FINRA's rules?</p> <p>23 A. Can you be more specific?</p> <p>24 Q. Well, regarding investment banking. Are 25 you authorized to do certain things as an investment</p>

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<p style="text-align: right;">Page 10</p> <p>1 banker under FINRA rules by getting this authorization</p> <p>2 from FINRA?</p> <p>3 A. Yes.</p> <p>4 MR. WARD: Objection. Compound.</p> <p>5 Q. Okay. All right. So why don't you tell</p> <p>6 me, what's the nature of your authorization from FINRA</p> <p>7 to conduct investment banking business.</p> <p>8 A. I have a Series 79 that handles the</p> <p>9 investment banking FINRA requirements.</p> <p>10 Q. Okay. And what is your understanding of</p> <p>11 those, in brief?</p> <p>12 A. A general understanding of investment</p> <p>13 banking services and financial advisory.</p> <p>14 Q. And you've referred to investment banking</p> <p>15 and you've referred to financial advisory. Are those</p> <p>16 considered two separate types of services?</p> <p>17 A. I don't -- I don't know.</p> <p>18 Q. Well, what's your understanding of</p> <p>19 financial advisory services?</p> <p>20 A. My understanding of financial advisory</p> <p>21 services are -- is advice given to clients about</p> <p>22 financial questions or concerns that they have.</p> <p>23 Q. And what's your understanding of</p> <p>24 investment banking services?</p> <p>25 A. Investment banking would be potentially a</p>	<p style="text-align: right;">Page 11</p> <p>1 more overarching theme of -- could include capital</p> <p>2 raising as well as just financial advice or advisory.</p> <p>3 Q. All right. And you referred, you used</p> <p>4 the term capital raising. What's your understanding of</p> <p>5 the different methods to raise capital for someone in</p> <p>6 your position as an investment banker?</p> <p>7 A. An investment banker doesn't necessarily</p> <p>8 raise capital.</p> <p>9 Q. All right. What are your services</p> <p>10 regarding the raising of capital as you understand</p> <p>11 them?</p> <p>12 A. An investment banker would liaise with</p> <p>13 the company and help determine strategies on going to</p> <p>14 raise capital, and how to exactly market and present</p> <p>15 the issuer, when I say issuer it could be a company, to</p> <p>16 potential investors.</p> <p>17 Q. All right. And is that both, is it your</p> <p>18 understanding that those capital raise activities could</p> <p>19 be considered private and public, that there's a</p> <p>20 difference between a private capital raise activities</p> <p>21 and public raise activities?</p> <p>22 A. Define different.</p> <p>23 Q. Well, do you consider that raising</p> <p>24 capital in the private markets as opposed to public</p> <p>25 markets, that there's, there's a difference between</p>
<p style="text-align: right;">Page 12</p> <p>1 them?</p> <p>2 A. Beyond -- there are different,</p> <p>3 potentially different investors, and there can be a</p> <p>4 different process.</p> <p>5 Q. Okay. So in regarding the public raise,</p> <p>6 what's your understanding of the different ways that</p> <p>7 money can be raised publicly?</p> <p>8 A. Can you specify, be more specific on</p> <p>9 different ways?</p> <p>10 Q. Okay. Well, do you have an understanding</p> <p>11 of the different ways a investment banker can help an</p> <p>12 issuer raise capital in the public markets, or you</p> <p>13 don't have an understanding?</p> <p>14 A. There are, yes, there are various ways to</p> <p>15 raise money publicly. However, there are similarities</p> <p>16 that I think -- you know, I'm trying to, trying to</p> <p>17 think here. So the answer to your question is yes, I'm</p> <p>18 aware of different ways to raise capital publicly.</p> <p>19 Q. Okay, fine. And could you describe them</p> <p>20 in brief, what's your understanding?</p> <p>21 A. So can you be more specific on the --</p> <p>22 defining different ways?</p> <p>23 Q. Okay. Well, I guess what I'm trying to</p> <p>24 do is get your understanding between -- well, let's</p> <p>25 just take a particular time from, I -- well, let me ask</p>	<p style="text-align: right;">Page 13</p> <p>1 you this. Is your understanding of your duties and</p> <p>2 responsibilities and the services that you were helping</p> <p>3 Alexander Capital provide were the same between 2014</p> <p>4 and presently, or they have changed, your understanding</p> <p>5 has changed?</p> <p>6 A. They're the same.</p> <p>7 Q. They're the same, all right.</p> <p>8 So what I'd like to do now is, we've</p> <p>9 talked about raising money in the public markets. What</p> <p>10 -- do you have an understanding of when the term public</p> <p>11 markets is used, does it -- what does it mean to you,</p> <p>12 if anything, does it mean something to you when we talk</p> <p>13 about raising capital in the public markets?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Could you tell us what does it</p> <p>16 mean to you?</p> <p>17 A. It means that you're raising capital for</p> <p>18 a company that is a public reporting entity to the SEC.</p> <p>19 Q. All right. So, all right. And if the --</p> <p>20 you're familiar with the term of art "initial public</p> <p>21 offering" or "IPO"?</p> <p>22 A. Yes.</p> <p>23 Q. What's your understanding of what an</p> <p>24 initial public offering or an IPO refers to?</p> <p>25 A. My understanding is that is the first</p>

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<p style="text-align: right;">Page 14</p> <p>1 time a security for an issuer is, is publicly 2 registered.</p> <p>3 Q. And it's registered with what agency 4 or --</p> <p>5 A. The SEC.</p> <p>6 Q. The Securities and Exchange Commission 7 when you say SEC --</p> <p>8 A. Yes.</p> <p>9 Q. -- is that correct?</p> <p>10 And what -- what does -- what's your 11 understanding of the services that Alexander Capital 12 provides, can provide to a company regarding the 13 raising of money through an initial public offering or 14 an IPO, what are the services, what's your 15 understanding of the services that Alexander Capital 16 can provide such a company that wishes to have an 17 initial public offering?</p> <p>18 A. The services can include helping the 19 company strategize on size, timing, valuations, 20 preparing strategies to target certain investors, 21 certain industry groups or types of investors. And 22 then on the capital raise side can introduce the 23 company to those said investors.</p> <p>24 Q. And are you familiar with the term of art 25 "firm commitment"?</p>	<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. Are you familiar with the term of art 3 "best efforts"?</p> <p>4 A. Yes.</p> <p>5 Q. Were you familiar with these terms 6 throughout the period of time that you've been 7 associated with Alexander Capital?</p> <p>8 A. Yes.</p> <p>9 Q. What was and is your understanding of 10 what "firm commitment" refers to regarding an IPO?</p> <p>11 A. Can you be more specific on what part of 12 firm commitment?</p> <p>13 Q. Well, do you have an, well, when I use 14 the term of art "firm commitment" in reference to an 15 initial public offering, do you have an understanding 16 of what that means in your industry in investment 17 banking?</p> <p>18 A. Yes.</p> <p>19 Q. What is your understanding?</p> <p>20 A. "Firm commitment" is a term that is used 21 when an underwriting agreement is executed with an 22 investment bank or investment banks and an issuer that 23 the firm or firms, upon signing that underwriting 24 agreement, take the responsibility of purchasing the 25 shares directly from the issuer, and then potentially</p>
<p style="text-align: right;">Page 16</p> <p>1 reselling those shares to investors, public investors.</p> <p>2 Q. And what is your understanding of best 3 efforts underwriting in reference to an initial public 4 offering?</p> <p>5 A. Best efforts is the situation where 6 investors purchase the securities not from the 7 investment bankers or investment banks in the 8 transaction, but directly from the issuer.</p> <p>9 Q. And from a standpoint of risk, or what is 10 your, what was -- what is your understanding, between 11 2014 and the present what has been your understanding 12 as to whether or not a company seeking your services to 13 assist it in an initial public offering, how it views 14 whether the underwriting is a firm commitment or a best 15 efforts underwriting?</p> <p>16 A. I don't know.</p> <p>17 Q. Does a firm -- was it your understanding, 18 has it been your understanding that a firm commitment 19 underwriting from a company standpoint has less risk to 20 it if the underwriter is guaranteeing the raise, as 21 opposed to a best efforts offering in which the risk is 22 the offering may not be sold?</p> <p>23 A. No.</p> <p>24 Q. You don't see a difference?</p> <p>25 MR. WARD: Objection. That's misstates</p>	<p style="text-align: right;">Page 17</p> <p>1 his testimony.</p> <p>2 Q. Okay. Well, do you see a different 3 difference?</p> <p>4 A. I don't see a difference in the risk.</p> <p>5 Q. So if a -- so you do not believe there's 6 a difference in risk between a company that Alexander 7 Capital undertakes a firm commitment offering in which 8 it agrees to purchase a certain amount of stock at a 9 certain price is different than the risk to the company 10 if Alexander Capital is undertaking the underwriting on 11 a best efforts basis in which it has to sell in the 12 public markets the stock?</p> <p>13 A. Can you define the term "risk" and whose 14 risk?</p> <p>15 Q. Okay. Well, let me ask this. In the 16 investment banking world, in your -- what is your 17 understanding as to -- well, do you have an 18 understanding from an investment banker's standpoint 19 when we talk about the risk of an offering?</p> <p>20 A. Yes. But please define whose risk.</p> <p>21 Q. Okay. How about the risk of Alexander 22 Capital as the underwriter?</p> <p>23 A. Again, can you please go, which risk, 24 define what risk to Alexander Capital.</p> <p>25 Q. All right. So do you have a -- did you,</p>

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<p style="text-align: right;">Page 18</p> <p>1 do you have an understanding or do you have an</p> <p>2 understanding from 2014 to the present as to whether an</p> <p>3 underwriter like Alexander Capital has to be authorized</p> <p>4 by FINRA in order for it to participate in a firm</p> <p>5 commitment offering, do you have such an understanding?</p> <p>6 A. Yes.</p> <p>7 Q. What is your understanding?</p> <p>8 A. My understanding is that FINRA authorizes</p> <p>9 a company, an investment bank to, or broker-dealer I</p> <p>10 should say, to be able to participate in firm</p> <p>11 commitment underwritings.</p> <p>12 Q. And does FINRA -- and if a underwriter</p> <p>13 such as Alexander Capital is not authorized to do a</p> <p>14 firm commitment offering, are there still other, is</p> <p>15 there, can it still do a best efforts offering?</p> <p>16 A. I don't know that specific FINRA logic.</p> <p>17 Q. All right. Well, if, is it your</p> <p>18 understanding that a, that a firm such as Alexander</p> <p>19 Capital has to have authorization from FINRA to do a</p> <p>20 best efforts offering?</p> <p>21 A. Yes.</p> <p>22 Q. And is it your understanding that</p> <p>23 FINRA's, the factors that FINRA takes into account</p> <p>24 regarding whether to authorize an underwriter to do a</p> <p>25 firm commitment as opposed to a best efforts offering,</p>	<p style="text-align: right;">Page 19</p> <p>1 are different or are they the same, what is your</p> <p>2 understanding?</p> <p>3 A. I don't know.</p> <p>4 Q. To this day you don't know?</p> <p>5 A. I don't know.</p> <p>6 Q. And prior to your getting -- you talked</p> <p>7 about the fact that you have a series, you described a</p> <p>8 Series 79, is that a license, how do you describe the</p> <p>9 Series 79, is it a license?</p> <p>10 A. I don't know.</p> <p>11 Q. A Series 79 authority, what's the word</p> <p>12 you used to describe it?</p> <p>13 A. The word I used?</p> <p>14 Q. Yes. What's your understanding of what a</p> <p>15 series -- you used the phrase Series 79 referring to</p> <p>16 what, your authority to be able to do something in the</p> <p>17 -- as an investment banker that unless you had a --</p> <p>18 A. A requirement by FINRA.</p> <p>19 Q. Okay, that's -- okay. So a Series 79</p> <p>20 allows you to do certain things that you could not do</p> <p>21 unless you had Series 79 authority; is that correct?</p> <p>22 A. I don't know.</p> <p>23 Q. In order to qualify for Series 79</p> <p>24 authority what -- did you have to undergo any training,</p> <p>25 education?</p>
<p style="text-align: right;">Page 20</p> <p>1 A. I don't know.</p> <p>2 Q. You don't know if you did?</p> <p>3 A. No, that's not what I said. I don't know</p> <p>4 if you need training or education.</p> <p>5 Q. Okay. What did you do to obtain Series</p> <p>6 79 authority, if you did anything?</p> <p>7 A. I took an exam, a FINRA exam.</p> <p>8 Q. And did you have to study for the FINRA</p> <p>9 exam, learn some specialized knowledge?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Could you describe that?</p> <p>12 A. It -- concepts in financial modeling and</p> <p>13 general FINRA, SEC rules.</p> <p>14 Q. In July of 2014 had you, as of May of</p> <p>15 2014, excuse me, had you been previously employed as an</p> <p>16 investment banker?</p> <p>17 A. Yes.</p> <p>18 Q. And could you just briefly tell us what</p> <p>19 experience did you have prior to joining Alexander</p> <p>20 Capital as of May of 2014 as an investment banker, just</p> <p>21 briefly?</p> <p>22 A. I was an investment banker at another</p> <p>23 broker-dealer. And we were and I was responsible for</p> <p>24 bringing in companies to -- that needed investment</p> <p>25 banking services.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. As of May of 2014 when you joined</p> <p>2 Alexander Capital, had you ever been involved in a firm</p> <p>3 commitment underwriting of any kind?</p> <p>4 A. Yes.</p> <p>5 Q. How many?</p> <p>6 A. I don't recall.</p> <p>7 Q. Any idea how many?</p> <p>8 A. I'd have to, you know, look it up</p> <p>9 exactly.</p> <p>10 Q. How many, how about best efforts</p> <p>11 offerings as of May of 2014, were you involved in</p> <p>12 those?</p> <p>13 A. Again, yes. And again, I don't recall.</p> <p>14 Q. And since May of 2014 when you joined</p> <p>15 Alexander Capital, from May of 2014 until November of</p> <p>16 2015, how many firm commitment offerings did you</p> <p>17 participate as a managing director at Alexander</p> <p>18 Capital?</p> <p>19 A. Zero, to my knowledge.</p> <p>20 Q. As of May of 2014, from May of 2014</p> <p>21 through November of 2015, what was your understanding</p> <p>22 as to whether Alexander Capital had the authorization</p> <p>23 from FINRA to conduct firm commitment offerings?</p> <p>24 A. Can you be more specific?</p> <p>25 Q. Okay. Did you understand from May of</p>

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<p style="text-align: right;">Page 22</p> <p>1 2014 through November of 2015 that Alexander Capital, 2 in order for it to participate in a firm commitment 3 offering, needed the authorization of FINRA or you did 4 not have that understanding?</p> <p>5 A. I did not have that -- 6 MR. WARD: Objection, compound. 7 A. Yeah 8 Q. Sorry. 9 A. I did not have that understanding. 10 Q. All right. What was your understanding 11 as to whether Alexander Capital from May of 2014 12 through November 2015 could participate in a firm 13 commitment offering?</p> <p>14 A. Can you be more specific with the time 15 frames? 16 Q. May 2014, when you first joined Alexander 17 Capital, through November of 2015. 18 A. And can you just repeat the question 19 again? Sorry. 20 Q. I will, sure. 21 MR. SCHLICHTMANN: Well, maybe Kari, 22 could you read that back. 23 (Record read) 24 A. Can you be more specific on 25 understanding?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. All right. Well, did you, did -- was it 2 your understanding that from May of 2014 to November of 3 2015 whether under the FINRA rules and regulations 4 Alexander Capital had the legal authority to conduct a 5 firm commitment offering as an underwriter, or you had 6 no such understanding?</p> <p>7 A. I had what? Again, you didn't define 8 understanding. 9 Q. All right. What was your understanding, 10 what did you believe regarding whether Alexander 11 Capital had the legal authority to conduct a firm 12 commitment offering pursuant to the rules and 13 regulations of the -- of FINRA?</p> <p>14 A. It -- I believed that, I understood and 15 believed that Alexander Capital had the authority to do 16 firm commitment underwritings when I joined the firm. 17 Q. Okay. When you joined the firm -- 18 A. In -- 19 Q. -- in May? 20 A. In May of 2014. 21 Q. Okay. And did you learn, did that 22 understanding change or that belief change from May of 23 2014 over time for some reason? 24 A. Yes. 25 Q. When?</p>
<p style="text-align: right;">Page 24</p> <p>1 A. I don't recall. 2 Q. What was the change? 3 A. I was notified that FINRA had not 4 approved the firm for firm commitment underwriting. 5 Q. And when were you notified, as best as 6 you can remember? 7 A. I don't, I really don't recall. 8 Q. And was it in relationship -- do you know 9 what company it was in relationship to? Was it a 10 particular offering that it was in relationship to or 11 in general? 12 A. I don't, I don't remember the specific 13 offering, no, it was -- 14 Q. Was it in general? 15 A. I don't think it was in -- no, it wasn't 16 in general, it was a specific offering, but I don't 17 recall the specific offerings. 18 Q. Okay. Now, by the way, Brian or 19 Mr. Gazdak, at any time you need to take a break for 20 any reason, you know, bathroom breaks, likewise the 21 stenographer, Amelia, myself, whatever, feel free, all 22 right? I'm just going to go through, but I don't want 23 to, you know. 24 A. Yes. 25 Q. If you feel that you'd like to take a</p>	<p style="text-align: right;">Page 25</p> <p>1 break or something, you know, a couple of minutes, 2 whatever, just let, just let us know, okay? Otherwise 3 I'm going to continue any asking the questions. 4 MR. SCHLICHTMANN: Right, Bryan, again 5 feel free to at any time as well. 6 MR. WARD: No, we'll maybe carry another 7 thirty minutes, another thirty minutes or so, and 8 Jonathan, just let us know if you have a need to 9 take a break. 10 MR. SCHLICHTMANN: Yeah, sure. 11 A. Okay. 12 MR. SCHLICHTMANN: It's not a -- okay. 13 Q. The -- all right. Mr. Gazdak, are you 14 aware as to whether Alexander Capital has received the 15 authority of FINRA to conduct firm commitment offering, 16 offerings? 17 A. Yes. 18 Q. And when did that occur? 19 A. I'm not -- I don't recall the specific 20 dates. 21 Q. Was it after 2016? 22 A. I don't recall. 23 Q. Well, was it before 2016? 24 A. Again, I don't recall. 25 Q. Okay, all right. I'm going to show you,</p>

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<p style="text-align: right;">Page 26</p> <p>1 I'm going to show you what's been marked as Plaintiff's</p> <p>2 Exhibit 143. Well, no, actually let me start with</p> <p>3 this. Okay.</p> <p>4 What's been marked as Plaintiff's Exhibit</p> <p>5 143 A, okay. And I'm going to ask that you be turned</p> <p>6 over control of the documents so you can flip through</p> <p>7 it. It's three pages. And it was previously provided,</p> <p>8 I don't know if you had an opportunity to look it over,</p> <p>9 but could you scroll through it and see if it's</p> <p>10 familiar to you? And this is PBE Exhibit 143 A.</p> <p>11 (Witness perusing documents)</p> <p>12 A. I apologize, it's slow.</p> <p>13 (Witness perusing documents)</p> <p>14 A. Okay, I've reviewed it or looked at it.</p> <p>15 Q. Are you familiar -- is this letter</p> <p>16 familiar to you, something you've seen before today?</p> <p>17 A. I don't recall.</p> <p>18 Q. Well, isn't it a fact, Mr. Gazdak, that</p> <p>19 this letter was issued to Alexander Capital on May 15th</p> <p>20 of 2015 and you received a copy of this letter after it</p> <p>21 was issued and discussed the matter with your attorney</p> <p>22 at Greenberg Traurig; isn't that true?</p> <p>23 A. I don't recall.</p> <p>24 Q. All right. I'm going to show you</p> <p>25 Plaintiff's Exhibit 143. I'm sorry, that was 143,</p>	<p style="text-align: right;">Page 27</p> <p>1 right? No, I'm showing you 144. Yeah. Here's</p> <p>2 Plaintiff's Exhibit 144. Okay. And do you recognize,</p> <p>3 would you scroll through this, it's an email, could you</p> <p>4 scroll through that and tell me if you recognize that?</p> <p>5 (Witness perusing documents)</p> <p>6 A. I'm just confirming that most of it's</p> <p>7 black.</p> <p>8 Q. Yes. That was an assertion of</p> <p>9 attorney-client privileges. Okay. Do you recognize</p> <p>10 the email?</p> <p>11 A. No.</p> <p>12 Q. All right. This is an email from</p> <p>13 Jonathan Gazdak at Alexander Capital to Stephen Walsh,</p> <p>14 and the subject is "unreasonable letter." Do you see</p> <p>15 the subject matter there?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And the attachment is a, it's</p> <p>18 described as "FINRA unreasonable letter," May 15, 2015,</p> <p>19 which is the attachment we just went over. Now, after</p> <p>20 reviewing the email and the attachment, does that help</p> <p>21 refresh your recollection about receiving such a</p> <p>22 letter?</p> <p>23 A. No.</p> <p>24 Q. Do you ever remember received, that</p> <p>25 Alexander Capital received a letter from FINRA</p>
<p style="text-align: right;">Page 28</p> <p>1 regarding whether or not it had the authority to</p> <p>2 conduct a firm commitment offering?</p> <p>3 A. No.</p> <p>4 Q. Do you ever remember, do you have any</p> <p>5 memory of Alexander Capital receiving an</p> <p>6 unreasonable -- a letter from FINRA regarding the fact</p> <p>7 that it may not have the, it did not have the authority</p> <p>8 to conduct firm commitment offerings regarding the</p> <p>9 Alterix Inc. offering that Alexander Capital was</p> <p>10 undertaking?</p> <p>11 A. No, I don't recall.</p> <p>12 Q. And this doesn't help refresh your</p> <p>13 recollection?</p> <p>14 A. No.</p> <p>15 MR. WARD: Jan, we will stipulate to the</p> <p>16 authenticity of this letter.</p> <p>17 MR. SCHLICHTMANN: I'm sorry, yes?</p> <p>18 MR. WARD: We'll stipulate to the</p> <p>19 authenticity of the letter.</p> <p>20 MR. SCHLICHTMANN: Okay, I appreciate</p> <p>21 that.</p> <p>22 Q. I'm going to also show you 143, okay,</p> <p>23 which is an email dated May 15th, that has the same</p> <p>24 attachment to it. That's 143, right? And again, could</p> <p>25 you take a look at it? It's an email dated May 15th</p>	<p style="text-align: right;">Page 29</p> <p>1 from an attorney at Greenberg, Mr. Marsico, and then,</p> <p>2 and the to line is to yourself, do you see that, as</p> <p>3 well as Mr. Mooney and Mr. Carlin. Do you see that in</p> <p>4 the email?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And again, there is</p> <p>7 attorney-client information which has been blacked out.</p> <p>8 But do you see in the part that was not blacked out it</p> <p>9 says, it's from CorpFin at FINRA, do you see that, down</p> <p>10 further on 143, down below, right there, yeah.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And that's from CorpFin to Mr.</p> <p>13 Marsico, the subject "unreasonable letter filing" and</p> <p>14 it has a number, do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And then it has issuer name, "Alterix</p> <p>17 Inc.," do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. "This is to advise you that an</p> <p>20 unreasonable letter has been issued. Go to the public</p> <p>21 offering system to view the letter."</p> <p>22 Now, do you remember receiving this</p> <p>23 email?</p> <p>24 A. Not -- no, I don't recall.</p> <p>25 Q. Do you ever, do you have any memory of</p>

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<p style="text-align: right;">Page 30</p> <p>1 Alexander Capital receiving a communication from FINRA</p> <p>2 that FINRA described that they had issued an</p> <p>3 unreasonable letter regarding the Alterix, Inc.</p> <p>4 offering?</p> <p>5 A. No. I, again, I'm sorry, I just don't</p> <p>6 recall.</p> <p>7 Q. Do you know what an unreasonable letter</p> <p>8 is?</p> <p>9 A. Yes.</p> <p>10 Q. What is it?</p> <p>11 A. It's a correspondence from FINRA to</p> <p>12 attorneys regarding certain comp -- certain</p> <p>13 compensation issues with financings.</p> <p>14 Q. Being done by the underwriter?</p> <p>15 A. Well, the financing being done by the</p> <p>16 issuer. But the --</p> <p>17 Q. Okay. And is an unreasonable letter, is</p> <p>18 it your understanding that the unreasonableness refers</p> <p>19 to the fee or the potential fee that the underwriter is</p> <p>20 seeking to charge for its services in the offering, was</p> <p>21 that your understanding?</p> <p>22 A. I don't know. I don't know. I mean --</p> <p>23 Q. I'm going to go back to 143 A, which is a</p> <p>24 letter from FINRA dated May 15th, 2015 that was</p> <p>25 attached to these emails. And it has your name on it.</p>	<p style="text-align: right;">Page 31</p> <p>1 And do you see in the re line there, do you see that,</p> <p>2 right, unreasonable letter?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And then it says in the second</p> <p>5 paragraph there, "Based on the information provided,</p> <p>6 the proposed -- the proposed compensation accruing to</p> <p>7 the underwriter and related persons as defined in FINRA</p> <p>8 rule 5110 is in the aggregate excessive for an offering</p> <p>9 of this size and nature; and therefore, must have must</p> <p>10 be modified to ensure compliance." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And is that your understanding, was that</p> <p>13 consistent with your understanding that the</p> <p>14 unreasonable letter was referring to the fee that the</p> <p>15 underwriter was seeking to charge in a particular</p> <p>16 offering, was that your understanding?</p> <p>17 A. I -- I don't recall.</p> <p>18 Q. Well, how about now?</p> <p>19 A. I don't know.</p> <p>20 Q. Are you saying, Mr. Gazdak, that as of</p> <p>21 that period and now, even up to now, you don't have an</p> <p>22 understanding of what it means to receive an</p> <p>23 unreasonable letter from FINRA regarding an offering</p> <p>24 that Alexander Capital is participating in?</p> <p>25 A. No, that's not what I'm saying.</p>
<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. What are you saying?</p> <p>2 A. You're asking, sorry, you're asking</p> <p>3 specific to compensation.</p> <p>4 Q. Yes.</p> <p>5 A. There's more to this letter when I</p> <p>6 reviewed it than just compensation.</p> <p>7 Q. No, I understand. But regarding</p> <p>8 unreasonableness, in that sentence it says, "the</p> <p>9 compensation accruing to the underwriter is excessive</p> <p>10 for an offering of this size and nature", do you see</p> <p>11 that?</p> <p>12 A. Correct. But it doesn't use the term</p> <p>13 unreasonable, so I don't know FINRA's rules for or -- I</p> <p>14 don't know FINRA's definition of unreasonable, if it's</p> <p>15 just -- I don't know if it applies just to</p> <p>16 compensation. That's what I'm saying.</p> <p>17 Q. Oh, okay, all right. Well, further on in</p> <p>18 this letter it does refer to compensation, okay, and</p> <p>19 then it has "other", do you see that "other", number</p> <p>20 six?</p> <p>21 A. Yes.</p> <p>22 Q. It says, "in connection with the filing,</p> <p>23 in connection with the filing received for Alexander</p> <p>24 Capital, the sole book running manager identified in</p> <p>25 the offering documents, the department suggests that</p>	<p style="text-align: right;">Page 33</p> <p>1 the firm contact their district office to discuss their</p> <p>2 participation in this offering and obtain approval to</p> <p>3 underwrite this offering on a firm commitment basis."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And when they refer to the district</p> <p>7 office in this letter, does that mean anything to you,</p> <p>8 the district office of FINRA?</p> <p>9 A. No.</p> <p>10 Q. Okay. As of May 15th, 2015, was it your</p> <p>11 understanding that Alexander Capital did have the</p> <p>12 approval from FINRA or did not have the approval from</p> <p>13 FINRA in general to undertake a firm commitment</p> <p>14 offering?</p> <p>15 A. I don't recall the specific timing of, as</p> <p>16 previously mentioned, of when I learned of the, to</p> <p>17 answer your question, you know, what you asked, firm</p> <p>18 commitment underwriting approval or not.</p> <p>19 Q. Okay. Mr. Gazdak, as of, did you have an</p> <p>20 understanding as to whether or not as managing director</p> <p>21 of Alexander Capital, during the time that you've been</p> <p>22 managing director, that Alexander Capital and its</p> <p>23 managing director had an obligation to its clients to</p> <p>24 be honest and forthright with them regarding the</p> <p>25 services that they were providing, did you have that</p>

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<p style="text-align: right;">Page 34</p> <p>1 understanding?</p> <p>2 A. Yes.</p> <p>3 Q. And what was your understanding?</p> <p>4 A. Exactly what you just said.</p> <p>5 Q. That they should be, that the managing</p> <p>6 director and Alexander Capital should be honest and</p> <p>7 forthright with their clients about the services that</p> <p>8 Alexander Capital was providing?</p> <p>9 A. To the best of our knowledge, yes.</p> <p>10 Q. And is, what was -- and did you, what was</p> <p>11 your understanding as to whether you as managing</p> <p>12 director and Alexander Capital had an obligation to be</p> <p>13 knowledgeable about the services as an investment</p> <p>14 banker that you were authorized to perform or were not</p> <p>15 authorized to perform on behalf of clients who were</p> <p>16 seeking your services?</p> <p>17 A. I'm sorry, there was a long sentence.</p> <p>18 Q. It was.</p> <p>19 A. I just want to know what the question</p> <p>20 was.</p> <p>21 Q. Sure.</p> <p>22 MR. SCHLICHTMANN: Could I have the</p> <p>23 question read back, Kari.</p> <p>24 (Record read)</p> <p>25 A. So the answer is, to the best of my</p>	<p style="text-align: right;">Page 35</p> <p>1 knowledge, I would answer that yes.</p> <p>2 Q. That you would, it was your understanding</p> <p>3 that you as managing director and Alexander Capital</p> <p>4 should be knowledgeable about the services that</p> <p>5 Alexander Capital as an investment bank can provide its</p> <p>6 clients or cannot provide, it had to be knowledgeable</p> <p>7 about both; is that correct?</p> <p>8 A. I can only answer that for me, and the</p> <p>9 answer is yes.</p> <p>10 Q. Okay. And did you believe from May of</p> <p>11 2014 to November of 2015, that you had -- that you were</p> <p>12 knowledgeable about the services that Alexander Capital</p> <p>13 under the rules and regulations of FINRA could provide</p> <p>14 a client or could not provide a client, were you</p> <p>15 knowledgeable of both of those during that period of</p> <p>16 time?</p> <p>17 A. I was knowledgeable about what I knew</p> <p>18 about. I can't say I was knowledgeable about other</p> <p>19 things that I don't know about.</p> <p>20 Q. Okay. And regarding what you did know,</p> <p>21 having seen this letter, dated May 15th, 2015, which is</p> <p>22 in this period of time we just discussed, does that</p> <p>23 refresh your recollection as to whether or not during</p> <p>24 this period of time, May 2014 to November of 2015, that</p> <p>25 Alexander -- that whether or not you knew whether</p>
<p style="text-align: right;">Page 36</p> <p>1 Alexander Capital had the legal authority to conduct a</p> <p>2 firm commitment offering to any company, including</p> <p>3 Alterix, Inc.?</p> <p>4 A. Again, I just don't know the specific</p> <p>5 timing. I can't recall the specific timing.</p> <p>6 Q. And this, looking at this letter doesn't</p> <p>7 help you, this May 15th, 2015 letter?</p> <p>8 A. No. No.</p> <p>9 Q. All right. I'm going to now show you</p> <p>10 Plaintiff's Exhibit 135, okay. And I'm going to</p> <p>11 represent to you that this is a application by</p> <p>12 Alexander Capital to FINRA dated June 3, 2015, which</p> <p>13 was a continuing member application under FINRA's Rule</p> <p>14 1017. I'm going to represent to you that that's what</p> <p>15 this is, all right? Now, first of all, do you know</p> <p>16 what a 1017 application is?</p> <p>17 A. Yes.</p> <p>18 Q. What's your, what was your understanding</p> <p>19 in 2014 to November of 2015 as to what a 1017</p> <p>20 application was?</p> <p>21 A. I did not know what it was at that time.</p> <p>22 Q. Do you know now?</p> <p>23 A. At an extremely high level, yes.</p> <p>24 Q. Okay. What's that, what's that</p> <p>25 understanding?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. It's my understanding now that a 1017 is</p> <p>2 the application to change certain FINRA capabilities,</p> <p>3 FINRA -- FINRA -- I don't know how to say it, FINRA</p> <p>4 capabilities.</p> <p>5 Q. Okay.</p> <p>6 A. Firms capabilities.</p> <p>7 Q. And what was your understanding, what's</p> <p>8 your understanding as to whether those capabilities</p> <p>9 refer to the ability to do a firm commitment as opposed</p> <p>10 to a best efforts underwriting?</p> <p>11 A. Now?</p> <p>12 Q. Yes.</p> <p>13 A. So again, the question, can you repeat</p> <p>14 that?</p> <p>15 Q. Yeah. What's your understanding as to</p> <p>16 what, that a 1017 application, all right, what's your</p> <p>17 understanding as to whether or not a 1017 application</p> <p>18 is required to, for an underwriter who was doing best</p> <p>19 efforts underwriting but wishes to conduct firm</p> <p>20 commitment underwriting?</p> <p>21 A. I don't know.</p> <p>22 Q. To this day?</p> <p>23 A. No, I don't know.</p> <p>24 Q. Even now?</p> <p>25 A. To this day, yes.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. And you're managing director of Alexander 2 Capital to this day; is that right? 3 A. I'm a managing director at Alexander 4 Capital. 5 Q. For the investment banking business? 6 A. Yes. 7 Q. And did I -- I'm going to put up the, 8 this chart right here, PDE 132. 9 I'm going to ask, Mr. Gazdak, that you 10 look at Exhibit PDE 132, all right? This is chart I'm 11 going to represent to you that was the part of the 1017 12 application by Alexander Capital in June of 2015, all 13 right? 14 A. Okay. 15 Q. Now, do you recognize Exhibit 132 at all, 16 are you familiar with it at all? 17 A. No. 18 Q. Okay. In looking it over, does that 19 fairly and accurately depict the corporate structure as 20 depicted in it as of the May of 2015 -- 21 A. I don't know. 22 Q. -- or June of 2015? 23 A. I don't know. 24 Q. Well, it shows your name is on there at 25 the lower left corner. Do you see that?</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Yes. 2 Q. Okay. Does that depict or is that, is 3 that consistent with your understanding of where you 4 were in the corporate hierarchy of Alexander Capital in 5 June of 2015? 6 A. No. 7 Q. Okay. What is inaccurate about the 8 chart? 9 A. I don't know. 10 Q. Okay. Well, you're saying it's not 11 accurate, right? 12 A. I don't know what this chart is. 13 Q. Okay. All I'm asking is, I want you to 14 assume that this is a corporate chart showing the 15 relationship between the different corporate hierarchy, 16 right, of Alexander Capital in June of 2015. All 17 right? And your name is on there in reference to other 18 people that you were subordinate to or that you 19 supervised. Do you see that? 20 A. No. I -- I don't assume that that's what 21 this is, I'm sorry. I don't know what this document 22 is. 23 Q. Okay. Well, I'm asking you, if one 24 wanted to depict as of June of 2015 the corporate 25 hierarchy of Alexander Capital, and showing where you</p>
<p style="text-align: right;">Page 40</p> <p>1 were in reference to the other people that you reported 2 to or who reported to you, is this chart in your mind 3 accurate for that period of time? 4 A. It's hard to tell from this chart, no, 5 there's no lines on it. Sorry, I apologize. 6 Q. Well, do you see that at the top it's 7 Mr. Rocco Guidici Pietro and Joseph Amato, do you see 8 that? 9 A. Yes. 10 Q. Do you know those people? 11 A. Yes. 12 Q. Okay. Who are they? 13 A. They're the principals of the firm. 14 Q. Okay. And so do you see them at the top? 15 A. Yes. 16 Q. Okay. I want you to assume that they're 17 put at the top to indicate that they're superior to the 18 people below them. Do you see that? I want you to 19 have that, I want you to have that, that, I'm going to 20 -- I want you to have that understanding as you look at 21 this chart that they were placed at the top to show the 22 people who were subordinate to them, all right? With 23 that understanding, is it true that you down below were 24 subordinate to Mr. -- to the principals? 25 A. I just want to clarify. You've saying,</p>	<p style="text-align: right;">Page 41</p> <p>1 you're saying that this is how I should interpret that 2 chart if I was to interpret? 3 Q. That's right. I'm going to ask you to 4 assume that this chart is indicating who is superior 5 and who is subordinate to the various officers of the 6 company. I want you to make that assumption, all 7 right? So with that assumption, okay, is it accurate 8 to place the principals at the top and you down, 9 several layers down there at investment banking; is 10 that accurate, as of June of 2015? 11 A. Again, you're asking me to assume a lot, 12 but I don't know -- the answer is I don't know, but -- 13 Q. All right. Well, let me ask you this. 14 In June of 2015 were you the head of investment 15 banking -- 16 A. Yes. 17 Q. -- at Alexander Capital? 18 A. Yes. 19 Q. So it indicates that your, in your block 20 you're investment banking; is that right? 21 A. Yes. 22 Q. Okay. And it indicates that there are, 23 Ms. Barry Latterman, right, that's a woman, right, 24 Barry Latterman? 25 A. Yes.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. Do you know her?</p> <p>2 A. Yes.</p> <p>3 Q. What was her responsibilities?</p> <p>4 A. I don't know.</p> <p>5 Q. Well, under, in this chart she is shown</p> <p>6 just directly below, below you, your block that has</p> <p>7 your name on it. Is that an indication that she was</p> <p>8 subordinate to you in some way or reported to you in</p> <p>9 some way?</p> <p>10 A. No.</p> <p>11 Q. Mr. Mooney and Mr. Carlin, do you know</p> <p>12 who they are?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Is Chris Carlin somebody that</p> <p>15 you're familiar with?</p> <p>16 A. Yes.</p> <p>17 Q. And during the time from May 2014 to the</p> <p>18 present has Mr. Carlin been associated with Alexander</p> <p>19 Capital?</p> <p>20 A. Yes.</p> <p>21 Q. And what's your understanding as to</p> <p>22 whether Mr. Carlin is -- reports to you or you report</p> <p>23 to him?</p> <p>24 A. That's not my understanding.</p> <p>25 Q. There's no reporting responsibility.</p>	<p style="text-align: right;">Page 43</p> <p>1 Where is Mr. Carlin in reference to you in the</p> <p>2 corporate of Alexander Capital?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know the position that Mr. Carlin</p> <p>5 has held, has held from 2014 to the present at</p> <p>6 Alexander Capital?</p> <p>7 A. Yes.</p> <p>8 Q. What's that?</p> <p>9 A. He's the head of our capital markets.</p> <p>10 Q. And is the capital markets different than</p> <p>11 investment banking?</p> <p>12 A. Yes.</p> <p>13 Q. What's capital markets?</p> <p>14 A. Capital markets interacts with clients,</p> <p>15 issuer clients as well as investor clients.</p> <p>16 Q. And is his position then, did you</p> <p>17 consider his position on the same par as yours?</p> <p>18 A. I don't know.</p> <p>19 Q. And how about Pat Mooney, do you know who</p> <p>20 Pat Mooney is?</p> <p>21 A. Yes.</p> <p>22 Q. And did you -- for how long has, to your</p> <p>23 knowledge how long has Mr., was Mr. Mooney associated</p> <p>24 with Alexander Capital?</p> <p>25 A. I don't, I don't recall specific dates.</p>
<p style="text-align: right;">Page 44</p> <p>1 Q. Do you remember if he was associated with</p> <p>2 them in the, in July of 2014, a few months after you</p> <p>3 started work at Alexander Capital?</p> <p>4 A. I'd have to look up specific dates,</p> <p>5 but --</p> <p>6 Q. Did Mr. -- what was your understanding of</p> <p>7 Mr., whether Mr. Mooney reported to you or not or you</p> <p>8 supervised him or not?</p> <p>9 A. Mr. Mooney, so no. Mr. Mooney was a</p> <p>10 consultant for Alexander Capital to assist with certain</p> <p>11 functions that he was charged with.</p> <p>12 Q. Was he a W-2 employee?</p> <p>13 A. I don't know.</p> <p>14 Q. Was he paid as a consultant?</p> <p>15 A. I don't -- I don't recall.</p> <p>16 Q. Was he an officer or director?</p> <p>17 A. Could you be more specific?</p> <p>18 Q. Did you consider yourself to be an</p> <p>19 officer of Alexander Capital at any time?</p> <p>20 A. No. No.</p> <p>21 Q. Do you know what an officer of a company</p> <p>22 is?</p> <p>23 A. Be more specific? No.</p> <p>24 Q. Someone who has executive authority.</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. You do not consider yourself to be an</p> <p>2 officer or director of Alexander Capital; is that</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. Do consider yourself to be a W-2</p> <p>6 employee?</p> <p>7 A. No.</p> <p>8 Q. What do you consider your employment</p> <p>9 relationship with Alexander Capital?</p> <p>10 A. I'm affiliated with Alexander Capital.</p> <p>11 Q. Yes, but are you affiliated as a W-2</p> <p>12 employee?</p> <p>13 A. No.</p> <p>14 Q. Okay. Then if you're not a W-2 employee</p> <p>15 do you have some other financial relationship with the</p> <p>16 firm, as in you are employed in some other fashion?</p> <p>17 A. I -- I'm not a W-2 employee.</p> <p>18 Q. Okay. Are you a 1099 employee or a</p> <p>19 consultant?</p> <p>20 A. I receive a 1099.</p> <p>21 Q. You receive a 1099.</p> <p>22 And as far as you're concerned, you do</p> <p>23 not consider yourself to be an officer of Alexander</p> <p>24 Capital; is that correct?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q. And that's been true from May of 2014 to 2 the present?</p> <p>3 A. Correct.</p> <p>4 Q. And Mr. Mooney, do you know whether he's 5 an officer?</p> <p>6 A. No.</p> <p>7 Q. All right, I'm going to now show you, 8 this is Exhibit 128. It's a letter from the Sichenzia 9 firm dated August 6th, 2015.</p> <p>10 A. Yup.</p> <p>11 Q. You can scroll through it. Yes, you are 12 free to scroll through it. And --</p> <p>13 A. This is 20 pages, so I didn't know, do 14 you want me to scroll --</p> <p>15 Q. Just scroll through the letter part, 16 which is just the six pages, and most of it is blacked 17 out.</p> <p>18 (Witness perusing documents)</p> <p>19 Q. Okay, I'd like you to go through, most of 20 it is blacked out, most of the pages, but it ends on 21 page 20, but most of the pages are blacked out so you 22 should be able to flip through it really quickly.</p> <p>23 In looking at that letter is this the 24 first time you've seen this letter or have you seen it 25 before?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Yes, first time I've seen it.</p> <p>2 Q. Okay. This is a letter, I'm going to 3 represent to you this is a letter from the Sichenzia 4 firm, a firm that was working for Alexander Capital, 5 and they are responding to questions by FINRA regarding 6 Alexander Capital's 1017 application that we've 7 previously showed you. All right? I want you, I 8 represent to you that that's what this is, okay?</p> <p>9 A. Okay.</p> <p>10 Q. All right. And it's dated August 6th, 11 2015. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And if you go to page four.</p> <p>14 A. Can you go to page, sorry, I don't mean 15 to start --</p> <p>16 Q. I'm sorry.</p> <p>17 A. No, it's just easier, it's faster if you 18 go.</p> <p>19 Q. Yeah, sure, absolutely. Thank you for 20 that. Okay.</p> <p>21 Now, do you see the un-blacked out part 22 talks about firm commitment underwriting?</p> <p>23 A. Yes.</p> <p>24 Q. And you see that it's, these are 25 questions from FINRA that it's asking Alexander Capital</p>
<p style="text-align: right;">Page 48</p> <p>1 to answer. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And it asks in A, "Please state 4 the anticipated industries in which the firm will 5 engage in firm commitment offerings." In B, "State the 6 intended customers the firm will engage." C, "Staff 7 has received information that indicates the firm has 8 already entered into engagements for firm commitment 9 underwriting. Please provide a detailed explanation 10 regarding these engagements, including copies of any 11 such engagement/engagements executed." Do you see 12 that?</p> <p>13 A. I do see that.</p> <p>14 Q. Okay. And the next question is, "In 15 addition to the above, state whether there are any 16 other deals currently in the works, and provide 17 detailed descriptions and any documentation (engagement 18 letters, et cetera) for each." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Now, as of August of 2015, all right, did 21 you --</p> <p>22 A. That's the date of this letter?</p> <p>23 Q. That's right, this is August 6th, 2015. 24 So you started to work in May of 2014. Now we're a 25 year later, right, and a couple of months, August of</p>	<p style="text-align: right;">Page 49</p> <p>1 2015. During that period of time did you consider as 2 managing director that Alexander Capital had any deals 3 currently in the works regarding a firm commitment 4 offering?</p> <p>5 A. I can't recall specific dates, but, but 6 yes.</p> <p>7 Q. Okay. And what were they?</p> <p>8 A. I don't recall specific --</p> <p>9 Q. How about the Alterix offering?</p> <p>10 A. I'd have to check the specific dates.</p> <p>11 Q. Well, the, I can represent to you that 12 the Alterix registration -- you signed the engagement, 13 sorry, the Alexander Capital and Alterix signed the 14 engagement agreement in July of 2014. And this is now 15 August of 2015. And on April of 2015 the first 16 underwriting, the first registration, private 17 registration was filed. Then another one in June. And 18 then the day before this letter a third private 19 registration statement was filed on behalf of Al -- on 20 behalf of Alterix with Alexander Capital as the 21 underwriter, all right? And each of these stated that 22 they were firm commitment offerings, all right? Now, 23 with that, first of all, does that refresh your 24 recollection that that occurred during this period of 25 time?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. I can't be specific on those dates, but</p> <p>2 generally.</p> <p>3 Q. That sounds right?</p> <p>4 A. Again, not specific date. I don't recall</p> <p>5 specific dates, but generally, yes.</p> <p>6 Q. Okay. So would you consider that was one</p> <p>7 of the deals in the works?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, I want to show you the next</p> <p>10 page. These, this is the response. Now, the response</p> <p>11 to the, the third question regarding the, in response</p> <p>12 to whether the staff -- the fact that the staff has</p> <p>13 received information that indicates the firm has</p> <p>14 already entered engagements for firm commitment</p> <p>15 underwriting, and asks for a detailed explanation</p> <p>16 regarding these engagements, the response that was made</p> <p>17 in C, page five, says "enclosed herewith as Exhibit G</p> <p>18 is a copy of the engagement between Alexander and</p> <p>19 blank", you know, or blacked out, excuse me, "regarding</p> <p>20 firm commitment underwriting. It is important to note</p> <p>21 that this agreement was entered into in error, and</p> <p>22 Alexander never performed any firm commitment</p> <p>23 underwriting services for", blacked out, "instead, the</p> <p>24 parties entered into a subsequent placement agent</p> <p>25 agreement for a private placement offering. A copy of</p>	<p style="text-align: right;">Page 51</p> <p>1 the placement agent agreement is annexed hereto as</p> <p>2 Exhibit H." Do you see that?</p> <p>3 A. Yes, I see that.</p> <p>4 Q. Okay. Are you aware of what company is</p> <p>5 being referred to there?</p> <p>6 A. No.</p> <p>7 Q. Okay. And all right, let's go to D. The</p> <p>8 question was asked, "In addition to the above, state</p> <p>9 whether there are any other deals currently in the</p> <p>10 works and provide detailed descriptions and any</p> <p>11 documentation (engagement letters, et cetera) for</p> <p>12 each." And do you see that the answer to D is "none"?</p> <p>13 A. Yes.</p> <p>14 Q. And that's an indication, the lawyer on</p> <p>15 behalf of Alexander Capital is telling FINRA in regards</p> <p>16 to their question as to what other deals in the works</p> <p>17 does Alexander Capital have regarding firm commitment</p> <p>18 offering, and they're saying none as of August 6th,</p> <p>19 2015. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Do you consider that response to</p> <p>22 be truthful or untruthful?</p> <p>23 A. I don't know. And I didn't write this</p> <p>24 letter, so.</p> <p>25 Q. No, I understand. But based on what you</p>
<p style="text-align: right;">Page 52</p> <p>1 have just testified to, that you considered Alterix to</p> <p>2 be a deal in the works regarding a firm commitment</p> <p>3 offering, would you consider this answer, if that's</p> <p>4 true, that this is a false answer, not a truthful</p> <p>5 answer to the regulators?</p> <p>6 MR. WARD: Objection. It's confusing</p> <p>7 because you said, Jan, you said --</p> <p>8 MR. SCHLICHTMANN: All right, I withdraw</p> <p>9 it.</p> <p>10 MR. WARD: -- false or -- false and</p> <p>11 truthful are not --</p> <p>12 MR. SCHLICHTMANN: Got you, I appreciate</p> <p>13 it. I'll withdraw the question.</p> <p>14 Q. Do consider, since you just previously</p> <p>15 testified that you considered Alterix a deal in the</p> <p>16 works regarding a firm commitment offering, and do you</p> <p>17 consider that this answer given in the August 6th, 2015</p> <p>18 letter to a question about other deals in the works,</p> <p>19 referring to firm commitment offerings, do consider,</p> <p>20 based on your testimony that you just gave us a couple,</p> <p>21 a minute ago, whether or not this answer of August 6th,</p> <p>22 2015 is factually correct or factually incorrect?</p> <p>23 A. So --</p> <p>24 MR. WARD: Again object as confusing,</p> <p>25 vague and --</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. SCHLICHTMANN: All right.</p> <p>2 MR. WARD: -- misleading.</p> <p>3 MR. SCHLICHTMANN: I don't want to</p> <p>4 confuse him, I appreciate that, all right.</p> <p>5 You're -- so let me not confuse him.</p> <p>6 Q. Based on your previous testimony, do you</p> <p>7 consider this answer "none" to the question as to</p> <p>8 whether there were other deals in the works regarding</p> <p>9 firm commitment offerings to be a truthful answer?</p> <p>10 A. I'm --</p> <p>11 MR. WARD: I'm going to object just</p> <p>12 because it calls for speculation as to the intent</p> <p>13 of the writer.</p> <p>14 A. I'm, again, I didn't -- I'm not a lawyer,</p> <p>15 nor am I a regulator, so the definition of "in the</p> <p>16 works" may be -- I can't comment on whether it's</p> <p>17 factual or not factual based on what was discussed when</p> <p>18 writing this letter, since I wasn't involved in writing</p> <p>19 this letter.</p> <p>20 Q. All right. Well, do you still, is the</p> <p>21 answer that you gave a minute ago, do you still adhere</p> <p>22 to that answer or do you want to change that answer?</p> <p>23 MR. WARD: Objection. Vague.</p> <p>24 Q. All right. Do you, just a minute ago I</p> <p>25 asked you a question whether you considered the Alterix</p>

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<p style="text-align: right;">Page 54</p> <p>1 offering to be a deal in the works regarding a firm 2 commitment offering, and you answered yes, you did. 3 I'm now asking, after seeing your, this letter on 4 behalf of Alexander Capital and its response, do you 5 wish to change that testimony or not change that 6 testimony?</p> <p>7 A. I'd like to ask for a definition of "in 8 the works."</p> <p>9 Q. Okay. But when you answered the 10 question, what was your -- what did you believe "in the 11 works" meant?</p> <p>12 A. I believed that "in the works" would mean 13 working with a client.</p> <p>14 Q. On a firm commitment offering?</p> <p>15 A. No, not --</p> <p>16 Q. Okay.</p> <p>17 A. Working with a client.</p> <p>18 Q. Okay. In what way working with a client?</p> <p>19 A. As the scope of the mutually agreed, you 20 know, terms or, or services.</p> <p>21 Q. All right.</p> <p>22 MR. SCHLICHTMANN: Now, Bryan, did you 23 say before you wanted to take a break at a 24 certain time or not? Because I'm ready to keep 25 going unless you want to break.</p>	<p style="text-align: right;">Page 55</p> <p>1 MR. WARD: Yeah, maybe it would be 2 helpful to take a quick break. And then what are 3 you, what are you thinking about lunch or how do 4 you want to handle that?</p> <p>5 MR. SCHLICHTMANN: I leave it to 6 everybody, you know. Let's see how I go and then 7 how much time I've used, and, you know, if people 8 want to take a break, you know, I'll just, why 9 don't we just leave it to how we all feel. Maybe 10 we'll get through and not have to get a lunch.</p> <p>11 MR. WARD: All right. I'm not holding 12 you to anything but how are you --</p> <p>13 MR. SCHLICHTMANN: No, no. I'll leave 14 that to you. Bryan, I'll leave that to you and 15 the witness as to whether, you know, as we go on, 16 I'll leave that decision solely to you. It's 17 not -- I, you know, I'll defer to your wishes on 18 there.</p> <p>19 MR. WARD: I'm just asking you how long 20 you think that we'll have today with Mr. Gazdak.</p> <p>21 MR. SCHLICHTMANN: Well, I'm restricted 22 to my half, right, as far as I understand, three 23 and a half hours, right, of actual testimony 24 time. So I'm definitely going to stay within 25 that block, so.</p>
<p style="text-align: right;">Page 56</p> <p>1 MR. WARD: Okay. And I'm not planning on 2 having any questions.</p> <p>3 MR. SCHLICHTMANN: No, and I understand 4 that, that's all right. But we, let's see if I, 5 you know, I appreciate that very much. I want to 6 try and get everything done within the three and 7 a half block, all right.</p> <p>8 MR. WARD: Okay.</p> <p>9 MR. SCHLICHTMANN: Okay. Let's see how 10 we go. And I appreciate what you're saying, so. 11 All right, so you said let's take a five minute 12 break or whatever you want to do?</p> <p>13 MR. WARD: Yeah, let's take five minutes 14 and then, and then come back.</p> <p>15 MR. SCHLICHTMANN: Yeah, let's --</p> <p>16 THE WITNESS: And just to confirm, 17 everybody, we're going on mute and off video or 18 just disconnecting from the Zoom, or does, I just 19 --</p> <p>20 MR. SCHLICHTMANN: Oh, yeah, explain to 21 him, yeah, go ahead.</p> <p>22 THE VIDEOGRAPHER: So --</p> <p>23 MR. WARD: It's best to stay on, right?</p> <p>24 THE VIDEOGRAPHER: We're going off the 25 record, the time is 11:27 a.m.</p>	<p style="text-align: right;">Page 57</p> <p>1 (Recess taken)</p> <p>2 THE VIDEOGRAPHER: We're back on the 3 record. The time is 11:41 a.m.</p> <p>4 BY MR. SCHLICHTMANN:</p> <p>5 Q. I'd like to show you, Mr. Gazdak, this 6 Exhibit 127, and it's short letter there. Could you 7 scroll through that and see if you recognize that?</p> <p>8 A. I'm just, Jessica, I don't know if that's 9 you, I'm just going to scroll back up through it. I do 10 not recognize this letter.</p> <p>11 Q. All right. I'm going to represent to you 12 that Plaintiff's Exhibit 127 is a letter from FINRA 13 dated June 11th, 2015 in response to the Alexander 14 Capital's 1017 application that we previously 15 discussed. And in this letter of June 11 to Mr. 16 Carmel, the lawyer for Alexander Capital, it states, if 17 you look at the second paragraph, it says, "While NASD 18 Rule 1017(c)(1) provides that a member may effect a 19 change in ownership or control prior to the conclusion 20 of the proceeding --</p> <p>21 A. Wait, Jan, I'm sorry to interrupt you.</p> <p>22 Q. Yeah.</p> <p>23 A. I don't have the control. Okay, there 24 you go. Thank you.</p> <p>25 Q. Yup, sorry. Amelia, thank you for doing</p>

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<p style="text-align: right;">Page 58</p> <p>1 that. All right, so it's this one right here.</p> <p>2 A. Yeah, okay, continue.</p> <p>3 Q. "While NASD Rule 1017(c)(1) provides that</p> <p>4 a member may effect a change in ownership or control</p> <p>5 prior to the conclusion of the proceeding, the rule</p> <p>6 also specifies that the staff may place interim</p> <p>7 restrictions on a member based upon the standards of</p> <p>8 NASD Rule 1014 pending final action. Therefore, the</p> <p>9 staff hereby imposes the following interim restrictions</p> <p>10 pursuant to Rule 1017(c). One, the firm is prohibited</p> <p>11 from effecting any portion of the aforementioned</p> <p>12 ownership change. The firm is also prohibited from</p> <p>13 effecting any additional changes in ownership,</p> <p>14 regardless of percentage amount." And then number two,</p> <p>15 "the firm is prohibited from making any changes or</p> <p>16 expansions to its business activities, including the</p> <p>17 addition of any associated persons and/or officers.</p> <p>18 And the above interim restrictions are effective</p> <p>19 immediately and shall remain in full force and effect</p> <p>20 until the earlier of approval of the application or a</p> <p>21 staff determines in its sole discretion to lift the</p> <p>22 interim restrictions and lifts the interim restrictions</p> <p>23 in writing."</p> <p>24 To your knowledge, first of all, did you</p> <p>25 know at any time that FINRA had sent a letter to</p>	<p style="text-align: right;">Page 59</p> <p>1 Alexander Capital through its lawyer informing it that</p> <p>2 in response to its 1017 application filed in early June</p> <p>3 of 2015 that it was not -- it was restricted from</p> <p>4 making any changes or expansions in its business</p> <p>5 activities, were you aware of that at any time?</p> <p>6 A. No.</p> <p>7 Q. Are you aware of it today that that</p> <p>8 occurred in June of 2015?</p> <p>9 A. Other than you showing me this letter,</p> <p>10 no.</p> <p>11 Q. Okay. So before I showed you this letter</p> <p>12 you did not know that?</p> <p>13 A. Correct.</p> <p>14 Q. Now, I'm going to show you a series of</p> <p>15 emails that were either from or to you. And I'm going</p> <p>16 to be showing those to you and asking you some</p> <p>17 questions about them. So let's start with right here,</p> <p>18 see that. No, sorry, this one. There it is, okay.</p> <p>19 All right.</p> <p>20 Now, they're short emails, so we will do</p> <p>21 the scrolling just to, you know, for convenience here.</p> <p>22 Do you see in this email dated -- Plaintiff's Exhibit</p> <p>23 54, it's from Chris Carlin to Pat Mooney, right, do you</p> <p>24 see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. And it concerns Alterix's business</p> <p>2 plan. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And it's a part of a thread. And</p> <p>5 if you go to the beginning of the thread, it says, it's</p> <p>6 from Peyton Jackson to Chris Carlin with a cc to Greg</p> <p>7 Croning, subject, BioChemicals/Alterix, do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it's, it says Chris, referring to</p> <p>10 Chris Carlin, "thank you again for your time today.</p> <p>11 Please expect Greg Croning and the executive leadership</p> <p>12 team at BioChemicals at your office tomorrow to 1:30 to</p> <p>13 introduce and discuss. I have copied Greg for mutual</p> <p>14 confirmation. He will forward to you preliminary due</p> <p>15 diligence materials."</p> <p>16 Now, do you have any memory that in July</p> <p>17 of 2014 that folks from, representing BioChemicals or</p> <p>18 Alterix came to the Alexander Capital offices or were</p> <p>19 introduced to the Alexander Capital offices, in</p> <p>20 particular Mr. Carlin, concerning seeking their</p> <p>21 services?</p> <p>22 A. I'm sorry, I don't recall, no.</p> <p>23 Q. Do you know who Peyton Jackson is, does</p> <p>24 that name mean anything to you?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. And going to the next one here. This is</p> <p>2 Plaintiff's Exhibit 56. Again, it's a short email.</p> <p>3 And do you see it says on, referring to Thursday, July</p> <p>4 24, "on the phone with Marvin Rosen right now. He</p> <p>5 really wants to cultivate our shop. I will have</p> <p>6 materials coming now separate email. Will call you as</p> <p>7 well." And this is to Chris Carlin from Peyton</p> <p>8 Jackson. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who Marvin Rosen is?</p> <p>11 A. No. I don't recall, no.</p> <p>12 Q. Did you know that Marvin Rosen was a</p> <p>13 lawyer with Greenberg Traurig?</p> <p>14 A. I, sorry, I don't recall, no.</p> <p>15 Q. Are you familiar with the name, with the</p> <p>16 law firm Greenberg Traurig?</p> <p>17 A. Yes.</p> <p>18 Q. And were you aware that Greenberg Traurig</p> <p>19 did provide services as counsel to Alexander Capital in</p> <p>20 the 2014-2015 period regarding the Alterix IPO</p> <p>21 offering?</p> <p>22 A. I can't be specific on the dates, whether</p> <p>23 it was 2014 or 2015, but yes.</p> <p>24 Q. All right. And was there a particular</p> <p>25 lawyer you were familiar with at Greenberg Traurig that</p>

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<p style="text-align: right;">Page 62</p> <p>1 you had any interactions with regarding the Alterix 2 offering?</p> <p>3 A. I don't recall, you know, all, all the 4 attorneys but as been discussed on this call, Anthony 5 Marsico was the attorney we worked with most 6 frequently, that I recall working with most frequently.</p> <p>7 Q. Now at the top of this email it has it's 8 from Pat Mooney, right? And it's in response to 9 something from Chris Carlin. Do you see that?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. Okay. All right. And you were aware of 12 the fact that Chris Carlin and Patrick Mooney had a, 13 you know, a long time friendship from when they were, 14 you know, earlier in their teens or as children, were 15 you aware of any long time relationship between 16 Mr. Carlin and Mr. Mooney of any kind?</p> <p>17 A. No, not -- no. I was aware that they'd 18 known each other for some time, but --</p> <p>19 Q. All right.</p> <p>20 A. -- not specifics.</p> <p>21 Q. Was Mr. Mooney become -- do you refer to 22 him as a consultant?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did he become, a consultant 25 regarding what, he consulted on what?</p>	<p style="text-align: right;">Page 63</p> <p>1 A. As mentioned, he would consult with 2 Alexander Capital in the capacity of doing analysis and 3 making introductions to potential clients.</p> <p>4 Q. And did Mr. Mooney come in after you or 5 was he already working there when you came on in May of 6 2014?</p> <p>7 A. I don't recall specifically, but I 8 believe after.</p> <p>9 Q. He came on after you, that's your 10 testimony,</p> <p>11 A. To my knowledge.</p> <p>12 Q. All right.</p> <p>13 A. You're breaking up again.</p> <p>14 Q. I'm sorry, yeah, please --</p> <p>15 A. It's still happening.</p> <p>16 Q. Actually there.</p> <p>17 A. There it is.</p> <p>18 Q. Still breaking up?</p> <p>19 MR. WARD: No, you're good now.</p> <p>20 MR. SCHLICHTMANN: Okay, great. All 21 right.</p> <p>22 Q. So now let's go to this one. Okay, now 23 I'm showing you Plaintiff's Exhibit 57, all right. And 24 it's from, it says from Jonathan Gazdak to Pat Mooney, 25 and this attachment, and the subject is EA. Do you see</p>
<p style="text-align: right;">Page 64</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Is it your understanding that EA refers 4 to engagement agreement?</p> <p>5 A. Yes.</p> <p>6 Q. And the attachment is Alexander-Alterix 7 EA, engagement agreement, public offering engagement, 8 7/29/14, doc. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And this is from you to Mr. Mooney. Do 11 you remember sending Mr. Mooney a proposed engagement 12 agreement to Mr. Mooney?</p> <p>13 A. No. I don't recall.</p> <p>14 Q. All right. Does this help refresh your 15 recollection?</p> <p>16 A. No, but I see the email, I see that.</p> <p>17 Q. You have no reason to doubt that that 18 happened?</p> <p>19 A. No.</p> <p>20 Q. I'm going to show you the attachment, 21 which is Exhibit 58, all right, and ask that you look 22 at that. Now, it's highlighted in yellow, and the 23 highlighting is part of the original document, all 24 right. And if you could just, are you familiar with 25 that document at all, whether the form of the document</p>	<p style="text-align: right;">Page 65</p> <p>1 or that particular document, referring to a particular 2 company?</p> <p>3 A. Yes.</p> <p>4 Q. In what way?</p> <p>5 A. It looks familiar.</p> <p>6 Q. Okay. And what about it is familiar, if 7 you could be, give us a little more information.</p> <p>8 A. It looks like a form of engagement 9 agreement that, that Alexander Capital would utilize.</p> <p>10 Q. And was using at that time?</p> <p>11 A. I, I don't, I don't recall specifically, 12 but it appears that way.</p> <p>13 Q. Okay. And this has to do with, so this 14 is, so from the email from you to Mr. Mooney you're 15 providing an attachment, which is this July 15, 2014 16 dated document involving this Stream TV Networks, Inc. 17 Is that familiar to you, Stream TV Networks, Inc. as a 18 client or was a client of Alexander Capital at that 19 time?</p> <p>20 A. I don't recall if they were a client or 21 not, but they're familiar to me.</p> <p>22 Q. And you're giving this to Mr. Mooney. 23 And do you have any memory at all that you were 24 providing this to Mr. Mooney so that he could make use 25 of it as a form for a engagement agreement, proposed</p>

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<p style="text-align: right;">Page 66</p> <p>1 engagement agreement for Alterix?</p> <p>2 A. No, I'm sorry, I don't recall, but --</p> <p>3 Q. Does that appear to be the case?</p> <p>4 A. Again, I don't recall, but if that's what</p> <p>5 the -- the email was blank on what to do, but.</p> <p>6 Q. Right. But in looking at the email and</p> <p>7 the attachment, does that seem right?</p> <p>8 A. Again, I can't be specific, but it</p> <p>9 doesn't not seem right.</p> <p>10 Q. Okay. Now, in this, it says in the first</p> <p>11 paragraph, "We are pleased to submit the following</p> <p>12 proposal with respect to an initial public offering</p> <p>13 (the public offering) by Stream TV Networks, Inc. (the</p> <p>14 Company) or Stream TV of \$20 million, consisting of the</p> <p>15 company's common shares." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And it says further down, "it is our</p> <p>18 intent," do you see that, "it is our intent"?</p> <p>19 A. Yes.</p> <p>20 Q. "It is our intent immediately prior to</p> <p>21 the effective date to enter into an exclusive</p> <p>22 underwriting agreement (the underwriting agreement)</p> <p>23 with the company. The underwriting --</p> <p>24 underwriter/broker will act as agent on a firm</p> <p>25 commitment basis." Do you see that?</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Now, is that consistent with your</p> <p>3 memory of the types of engagement agreements that</p> <p>4 Alexander Capital was entering into with clients at</p> <p>5 that period of time?</p> <p>6 MR. WARD: Objection, calls for</p> <p>7 speculation.</p> <p>8 MR. SCHLICHTMANN: All right, well, okay,</p> <p>9 let me withdraw it then.</p> <p>10 Q. Do you have a memory as to whether this</p> <p>11 is consistent or with the type of engagement agreements</p> <p>12 Alexander was entering into at this time?</p> <p>13 A. I don't -- don't recall. I don't know.</p> <p>14 I don't recall all the engagement engagements.</p> <p>15 Q. Did you -- but when you first referred to</p> <p>16 these you said it was like a form. Is this, is it your</p> <p>17 memory that this was the general form that was followed</p> <p>18 at that time?</p> <p>19 A. Again, I can't be certain without seeing</p> <p>20 those previous engagement agreements.</p> <p>21 Q. All right. Well, you see this one, well,</p> <p>22 with one of the -- one company on Alexander Capital</p> <p>23 letterhead, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So let's go to Plaintiff's Exhibit</p>
<p style="text-align: right;">Page 68</p> <p>1 59. Okay, and you see this is Pat Mooney to you dated</p> <p>2 July 29, 2014, do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Subject, "Engagement Agreement"</p> <p>5 attachment, Alterix underscore engagement agreement?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And Pat, Mr. Mooney is saying "can</p> <p>8 you quickly eyeball this"?</p> <p>9 A. Yes.</p> <p>10 Q. Do you remember receiving an email from</p> <p>11 Mr. Mooney or Mr. Mooney requesting from you at this</p> <p>12 time that I, you know, I took your, the form you gave</p> <p>13 me or I took the letter that you gave me and here's how</p> <p>14 I have changed it to make a proposal to Alterix. Does</p> <p>15 this refresh your recollection in any way that that</p> <p>16 occurred?</p> <p>17 A. No. I just don't recall any.</p> <p>18 Q. Any reason to doubt that that occurred</p> <p>19 after seeing these emails?</p> <p>20 A. No, I can't -- no. But he says "can you</p> <p>21 quickly eyeball this," he didn't say I'll do it.</p> <p>22 Q. All right. And I'm going to show you the</p> <p>23 attachment to that email that he was asking you to</p> <p>24 eyeball. Do you see it's now in red, it indicates the</p> <p>25 changes he made to the letter that you had given him</p>	<p style="text-align: right;">Page 69</p> <p>1 that we just previously talked about, do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And he changes the date to July</p> <p>4 29, he makes it to Marshall Sterman, CEO of Alterix</p> <p>5 with their address, he crosses out Stream TV and their</p> <p>6 address. Do you see that?</p> <p>7 A. Yes.</p> <p>8 MR. WARD: And just for the record,</p> <p>9 you're referring to Exhibit 60. I'm not sure if</p> <p>10 you --</p> <p>11 MR. SCHLICHTMANN: I'm sorry, very good.</p> <p>12 Thank you, Bryan, you're right. I'm referring to</p> <p>13 Plaintiff's Exhibit 60. Okay, thank you for</p> <p>14 that.</p> <p>15 Q. And then it says he replaces Stream TV</p> <p>16 with Alterix and he puts in the word "up to" \$20</p> <p>17 million. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. "So we pleased to submit the following</p> <p>20 proposal with respect to an initial public (the public</p> <p>21 offering) by Alterix, Inc., (the company) of up to \$20</p> <p>22 million." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And the language you'll see, none</p> <p>25 of the other language in that letter that you had</p>

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<p style="text-align: right;">Page 70</p> <p>1 provided Mr. Mooney has been changed, it's all the</p> <p>2 same. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And then the only other changes are about</p> <p>5 the, on page three, is rather than in the previous one</p> <p>6 it asks for \$50,000, on signing this one split it, 25</p> <p>7 on signing and another 25 upon satisfying completion of</p> <p>8 due diligence. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Otherwise they're the same except</p> <p>11 for that change in the order of payment; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. It seems so.</p> <p>15 Q. Okay. And then the cash in subparagraph</p> <p>16 F, a cash M&A transaction fee, rather than two percent</p> <p>17 it's bumped up to three percent. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Otherwise there's no other changes</p> <p>20 noted, except that the, and it changes, you know,</p> <p>21 Stream TV signature line to Alterix --</p> <p>22 A. Yes.</p> <p>23 Q. -- correct? All right.</p> <p>24 Then I'm going to show you on Plaintiff's</p> <p>25 Exhibit 61, there's an email from Pat Mooney sent on</p>	<p style="text-align: right;">Page 71</p> <p>1 July 29th to Marshall Sterman, subject, "IPO engagement</p> <p>2 agreement," attachment, Alterix underscore IPO</p> <p>3 underscore engagement agreement. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And then it says, "Hi guys,</p> <p>6 please find attached the engagement agreement for the</p> <p>7 contemplated IPO. Please review and if acceptable sign</p> <p>8 and return. If you have any questions, please let me</p> <p>9 know. We are excited to get started. All the best,</p> <p>10 PM," referring to Pat Mooney. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And do you have a memory at all</p> <p>13 that Mr. Mooney took this letter of another company</p> <p>14 that you gave him, another company's deal, potential</p> <p>15 deal, and that he then changed it to refer to Alterix,</p> <p>16 kept almost all the other changes except as we've</p> <p>17 indicated, and then he sent it to Mr. Sterman on behalf</p> <p>18 of Alterix. Do you have any memory of that at all, is</p> <p>19 that your understanding of that or do you have any</p> <p>20 reason, let me ask, or do you have any reason to doubt</p> <p>21 that that occurred?</p> <p>22 A. I don't, I don't have memory of it other</p> <p>23 than it being shown here.</p> <p>24 Q. But you don't doubt, you have no reason</p> <p>25 to doubt that that occurred?</p>
<p style="text-align: right;">Page 72</p> <p>1 A. I have no -- you, you made a long</p> <p>2 statement there, so you know, I'm just trying to -- I</p> <p>3 don't know what you were asking. What specifically am</p> <p>4 I doubting?</p> <p>5 Q. Well, that the chain of events I just</p> <p>6 described, you know, occurred roughly, you know,</p> <p>7 approximately how I described them?</p> <p>8 A. Can you just repeat, I just want to make</p> <p>9 sure I --</p> <p>10 Q. Absolutely, of course. That what</p> <p>11 happened here is that Mr., that Alterix was introduced</p> <p>12 to Alexander Capital, and then to Mr. Carlin. And</p> <p>13 Mr. Carlin brought in Mr. Mooney. Mr. Mooney then</p> <p>14 asked you for a form that he could use regarding a</p> <p>15 potential engagement agreement. You provided him a</p> <p>16 form of an engagement agreement of another company with</p> <p>17 Alexander Capital, and he then changed it to refer to</p> <p>18 Alterix Inc. And then he provided that draft</p> <p>19 engagement agreement to Mr. Sterman, who was</p> <p>20 representing Alterix Inc. as a potential engagement</p> <p>21 agreement between Alterix and Alexander Capital. Is</p> <p>22 that --</p> <p>23 MR. WARD: Object, sorry, I didn't mean</p> <p>24 to interrupt, but you can complete your question,</p> <p>25 Jan.</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. SCHLICHTMANN: Yeah, I was just</p> <p>2 trying to summarize, because if you're finding it</p> <p>3 objectionable I'll withdraw it, okay.</p> <p>4 Q. Let me ask it this way. Of the emails</p> <p>5 that we just referred to from July of 24 through July</p> <p>6 29, do you have any reason to believe that the events</p> <p>7 depicted in those emails in which you are indicated</p> <p>8 received or sent, do you have any reason to believe</p> <p>9 that they do not accurately depict what occurred during</p> <p>10 that period as the emails depict?</p> <p>11 A. I can only speak to the emails that I'm</p> <p>12 on, and I generally -- I don't recall, but no, I don't</p> <p>13 have a reason to not see that those are the emails that</p> <p>14 went back and forth.</p> <p>15 Q. Okay. Okay. And the -- and in fact,</p> <p>16 here is Plaintiff's Exhibit 63, between Pat, from Pat</p> <p>17 Mooney to you, subject, "forward IPO engagement</p> <p>18 agreement, attachment, Alterix IPO engagement</p> <p>19 agreement." And he is forwarding you the email we just</p> <p>20 went over that he had sent to Mr. Sterman, with the</p> <p>21 engagement agreement, the proposed engagement agreement</p> <p>22 attached. And I'm, okay, I'm going to, that's on</p> <p>23 Exhibit 63. And the -- here is the attachment to that</p> <p>24 email, which is dated July 29th to Marshall Sterman.</p> <p>25 All right. This is the attachment to the email that</p>

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<p style="text-align: right;">Page 74</p> <p>1 Mr. Mooney sent to you about what he had sent to</p> <p>2 Mr. Sterman. Do you see that, is that what the emails</p> <p>3 indicate?</p> <p>4 MR. WARD: Just for the record, this is</p> <p>5 63, yeah, Plaintiff's 64.</p> <p>6 MR. SCHLICHTMANN: Right, Bryan, thank</p> <p>7 you, thank you.</p> <p>8 Q. This is Plaintiff's Exhibit 64. It's the</p> <p>9 attachment to the email from Mr. Mooney to you.</p> <p>10 A. Okay. You just said, so this is the</p> <p>11 email, the second email from -- well, can you scroll</p> <p>12 down?</p> <p>13 Q. Absolutely?</p> <p>14 A. To the end.</p> <p>15 Q. Oh, absolutely, yeah, yes, yes. It's</p> <p>16 unsigned, yeah.</p> <p>17 A. Oh, it's unsigned, okay.</p> <p>18 Q. I'm saying this is the proposed</p> <p>19 engagement agreement.</p> <p>20 A. Okay.</p> <p>21 Q. All right. Again, these emails that show</p> <p>22 Mr. Mooney sending to you what he had sent to</p> <p>23 Mr. Sterman about the proposed engagement agreement for</p> <p>24 Alterix, does that help refresh your recollection at</p> <p>25 all that that occurred?</p>	<p style="text-align: right;">Page 75</p> <p>1 A. No, not necessarily, but, you know.</p> <p>2 Q. You don't doubt it?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Now, now, we talked about</p> <p>5 Greenberg Traurig, you are familiar with them, you said</p> <p>6 you remember Mr. Marsico in particular. You do</p> <p>7 remember that, it's your memory that Greenberg was</p> <p>8 retained by Alexander Capital to represent it as an</p> <p>9 underwriter regarding this, the Alterix offering, you</p> <p>10 do remember that?</p> <p>11 A. I don't recall the specific services</p> <p>12 Greenberg Traurig was, I -- but, but they were</p> <p>13 our -- they were retained by Alexander for the IPO.</p> <p>14 Q. Okay. Now, regarding this engagement</p> <p>15 agreement with Alterix, I'm going to show you an email,</p> <p>16 it's Plaintiff's Exhibit 65, okay. And we'll start at</p> <p>17 the bottom of the thread. It's just two combined. So</p> <p>18 it's from you, dated August 9th, 2014 to Chris Carlin</p> <p>19 and Pat Mooney, subject, Alterix, all right. It says</p> <p>20 "Chris/Pat, I think Chris mentioned that Alterix is</p> <p>21 coming in this Wednesday to potentially kick off the</p> <p>22 IPO process and deliver a check. Hope they're not just</p> <p>23 coming in to do that. A couple of things - is there</p> <p>24 any way to have that meeting on Monday? Tuesday I'm</p> <p>25 traveling to Oregon for a DD meeting on Wednesday, back</p>
<p style="text-align: right;">Page 76</p> <p>1 Thursday night. If not, I understand - as we start the</p> <p>2 first public process from scratch, we need to make sure</p> <p>3 we do things in a polished customer straightforward</p> <p>4 manner. We need internally -- we need internally</p> <p>5 strategize on amount, structure, is there a bridge,</p> <p>6 timing, counsel, (Chris mentioned Cozen, have they done</p> <p>7 other phase two public deals) auditors, et cetera, all</p> <p>8 leading to a formal kick off meeting. I'm happy to hop</p> <p>9 on a call this weekend to discuss. Don't call me as</p> <p>10 I'm upstate and have no cell service, but have WiFi, so</p> <p>11 emails work. I can then drive to location that has</p> <p>12 cell service. Thanks, am excited to start the first</p> <p>13 public Alexander deal from scratch! JGG."</p> <p>14 Now, in going over that email, does that</p> <p>15 refresh your recollection about how you felt or what</p> <p>16 you thought concerning this opportunity as of that</p> <p>17 date?</p> <p>18 A. No. And I -- define how I felt or --</p> <p>19 Q. All right, well --</p> <p>20 A. And all that.</p> <p>21 Q. Okay, fair enough.</p> <p>22 A. But I see this email, yes.</p> <p>23 Q. Okay. This email, is this email</p> <p>24 consistent with your understanding or remembrance,</p> <p>25 excuse me, your memory of how, what your reaction was</p>	<p style="text-align: right;">Page 77</p> <p>1 to the engagement agreement with Alterix and Alexander?</p> <p>2 A. I don't recall specifically, but</p> <p>3 generally yes.</p> <p>4 Q. Is it, now, this email is saying that</p> <p>5 it's "the first public Alexander deal from scratch."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I see that, yes.</p> <p>8 Q. Was it your understanding at that time</p> <p>9 that Alexander Capital as of that time had not engaged</p> <p>10 in a public offering from scratch?</p> <p>11 A. No. I was only speaking in -- only</p> <p>12 speaking as of my time at Alexander Capital.</p> <p>13 Q. All right. So this is in reference to</p> <p>14 since you've been at Alexander Capital the firm had not</p> <p>15 done a public offering from scratch?</p> <p>16 A. I don't recall, but it would appear from</p> <p>17 my email, yes.</p> <p>18 Q. Okay. And is it, from this email, well,</p> <p>19 is it fair to characterize, and tell me if it is or</p> <p>20 isn't, that you're indicating that you want to be</p> <p>21 involved to the degree discussed in the email with this</p> <p>22 particular engagement agreement opportunity; is that</p> <p>23 fair?</p> <p>24 A. I -- and I don't mean to say -- when you</p> <p>25 way I want to be involved, you're speaking interest</p>

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<p style="text-align: right;">Page 78</p> <p>1 Jonathan Gazdak?</p> <p>2 Q. Precisely.</p> <p>3 A. Not Alexander Capital.</p> <p>4 Q. That's correct, right.</p> <p>5 A. I don't recall, but yes.</p> <p>6 Q. And is it, is it true that, consistent</p> <p>7 with this email, you were involved on the major events</p> <p>8 that occurred regarding Alexander Capital's services</p> <p>9 provided regarding the Inpellis offering, the Alterix</p> <p>10 offering?</p> <p>11 MR. WARD: Objection, vague.</p> <p>12 MR. SCHLICHTMANN: I'm sorry, okay, I</p> <p>13 will withdraw it.</p> <p>14 Q. Is it true that you were involved after</p> <p>15 this email dated August 9th, 2014, in the, in the major</p> <p>16 events having to do with the all -- the Alterix</p> <p>17 offering in which Alexander Capital was involved?</p> <p>18 MR. WARD: Objection, vague.</p> <p>19 MR. SCHLICHTMANN: I'm sorry?</p> <p>20 MR. WARD: Objection, vague. He can</p> <p>21 answer.</p> <p>22 MR. SCHLICHTMANN: Well, I don't -- but</p> <p>23 let me just make it better then if it's too</p> <p>24 vague.</p> <p>25 MR. WARD: It's just the major events</p>	<p style="text-align: right;">Page 79</p> <p>1 part.</p> <p>2 MR. SCHLICHTMANN: I got you, okay, fine.</p> <p>3 Q. Is it true that after August 9th, 2014</p> <p>4 you were involved, okay, to some degree with the</p> <p>5 Alexander Capital services provided regarding the</p> <p>6 Alterix offering?</p> <p>7 A. To some degree. I don't recall</p> <p>8 specifically, but to some degree, yes.</p> <p>9 Q. Okay. All right. Now, I'm going to show</p> <p>10 you what's been marked, all right, this is Exhibit 96.</p> <p>11 And it's a short little thread. It starts with</p> <p>12 Mr. Marsico from Greenberg Traurig on March 18th to</p> <p>13 Mooney, Olympia, other Greenberg lawyers, subject</p> <p>14 Alterix, and it's a, attached is a draft of the</p> <p>15 underwriting section to be included in the Form S-1 for</p> <p>16 Alterix. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And "please review and let us have your</p> <p>19 comments." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And it later says that, you know, he's,</p> <p>22 that he's got certain footnotes in brackets where we</p> <p>23 need to either discuss the arrangement either because</p> <p>24 the engagement letter is silent, or discuss</p> <p>25 modifications to the engagement letter due to potential</p>
<p style="text-align: right;">Page 80</p> <p>1 issues we see under FINRA rules. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. "Please let us know when you'd like to</p> <p>4 discuss." Now, this is sent March 18th to Mr. Mooney</p> <p>5 and other Greenberg lawyers. And then you see</p> <p>6 Mr. Mooney on March 18th, the same day, sends to you,</p> <p>7 forwards you this email from Mr. Marsico. Do you see</p> <p>8 that.</p> <p>9 A. Yes.</p> <p>10 Q. And first of all, do you remember that at</p> <p>11 all?</p> <p>12 A. No, I'm sorry, I don't recall.</p> <p>13 Q. But is that, the fact that, that</p> <p>14 Mr. Green -- that Mark -- that Mr. Mooney has forwarded</p> <p>15 to you Mr. Marsico's email regarding the underwriting</p> <p>16 section to be included in the Form S-1, is that</p> <p>17 consistent with your understanding of your involvement</p> <p>18 with the Alterix offering at that time? Was this</p> <p>19 unusual or this is, was normal for you to receive from</p> <p>20 Mr. Mooney Mr. Marsico's draft of the underwriting</p> <p>21 section to be included in the Alterix offering?</p> <p>22 A. Again, I don't mean -- but define normal,</p> <p>23 when you said is this normal?</p> <p>24 Q. Okay. Well, is this consistent with your</p> <p>25 duties at that time at Alexander Capital?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. I don't know about being my duties. But</p> <p>2 this -- so I can't speak to my duties then as opposed</p> <p>3 to, you know, as with regards to this email. But in</p> <p>4 general I would say no, that this is, this is not</p> <p>5 abnormal that I would see this email.</p> <p>6 Q. Okay. And the attachment that it's</p> <p>7 referring to is, is this, is, Plaintiff's Exhibit 97,</p> <p>8 all right, and do you see it's a underwriting, it says</p> <p>9 underwriting?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And it's a, I could represent to</p> <p>12 you that this is for insertion into the Alterix</p> <p>13 offering at that time, the draft, all right, I could</p> <p>14 represent that to you. But in looking it over, is this</p> <p>15 familiar to you at all, this underwriting section for</p> <p>16 inclusion into the Alterix draft at that time?</p> <p>17 A. No. I mean, it's not familiar to me, but</p> <p>18 I, but I -- I see it here.</p> <p>19 Q. All right. Do you see on this</p> <p>20 Plaintiff's Exhibit 97 it says, "Alexander Capital is</p> <p>21 acting as the sole book running manager of the</p> <p>22 offering." All right?</p> <p>23 A. Yes.</p> <p>24 Q. So they're the only one listed is</p> <p>25 Alexander Capital LP. Do you see that in blue?</p>

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<p style="text-align: right;">Page 82</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And then it says, "The</p> <p>3 underwriters are committed to purchase all the shares</p> <p>4 of common stock offered by us other than those covered</p> <p>5 by the option to purchase additional shares described</p> <p>6 below." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And is it your understanding that</p> <p>9 the, that at that time Alexander Capital was intending</p> <p>10 to be the underwriter on this offering committed to</p> <p>11 purchase all the shares of the common stock offered in</p> <p>12 the initial public offering?</p> <p>13 A. No, not from this document.</p> <p>14 Q. From something else?</p> <p>15 A. If you scroll up.</p> <p>16 Q. Yeah.</p> <p>17 A. This is a document in, that's written in</p> <p>18 the future for something that's done in the past. And,</p> <p>19 and the paragraph you read is dependent on us doing</p> <p>20 sentence number two of the first paragraph.</p> <p>21 Q. Of the first paragraph. "We have entered</p> <p>22 into an underwriting agreement dated blank 2015."</p> <p>23 A. And once we enter into that underwriting</p> <p>24 agreement, then the second paragraph would be what we</p> <p>25 intended to do.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Okay. All right.</p> <p>2 A. But we haven't entered into an</p> <p>3 underwriting agreement.</p> <p>4 Q. All right. Is it, and, and is it fair to</p> <p>5 say that this is a statement of Alexander Capital's</p> <p>6 intent?</p> <p>7 MR. SCHLICHTMANN: Let me withdraw that.</p> <p>8 Q. Is it fair -- I'm going to withdraw the</p> <p>9 question. Is it fair to say that this underwriting</p> <p>10 insertion as you have described it is consistent with</p> <p>11 the Alexander Capital's stated intent in the engagement</p> <p>12 agreement to undertake a firm commitment offering?</p> <p>13 A. Yes, only after entering into an</p> <p>14 underwriting agreement.</p> <p>15 Q. Okay. All right. At the time that this,</p> <p>16 that the engagement agreement was written and this</p> <p>17 underwriting insertion was proposed, did Alexander</p> <p>18 Capital have the legal authority to engage in a firm</p> <p>19 commitment offering?</p> <p>20 A. I'm not sure of the dates. So can you</p> <p>21 qualify, qualify what the date?</p> <p>22 Q. This date is March --</p> <p>23 A. I apologize.</p> <p>24 Q. -- this is March of 2015. And the letter</p> <p>25 that we, the 1017 application, the unreasonable letter</p>
<p style="text-align: right;">Page 84</p> <p>1 is dated May 15th.</p> <p>2 A. Are you asking, and I apologize for this,</p> <p>3 are you asking me as I know now or as I know then at</p> <p>4 that time?</p> <p>5 Q. Well, let's start now and then go back.</p> <p>6 MR. WARD: And let me just interject with</p> <p>7 a quick objection to it's calling for a legal</p> <p>8 conclusion.</p> <p>9 MR. SCHLICHTMANN: Okay.</p> <p>10 A. So as of now given the date, I think you</p> <p>11 said March?</p> <p>12 Q. Yes, of 2015.</p> <p>13 A. I understand it now that Alexander</p> <p>14 Capital didn't have the authority.</p> <p>15 Q. All right. Okay. You did not understand</p> <p>16 it then?</p> <p>17 A. I did not understand it then, correct.</p> <p>18 Not to my -- yeah, not to my recollection or not, yeah,</p> <p>19 I didn't.</p> <p>20 Q. All right. I'm just going to show you</p> <p>21 this briefly. Here's March 30th, 2015, Plaintiff's</p> <p>22 Exhibit 98. Again, it's a, it's an email from</p> <p>23 Greenberg lawyers, I guess a Mr. Guzman, and to many</p> <p>24 people, including yourself. Do you see you're in the</p> <p>25 middle of it there, do you see your --</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Yes, yeah. There's a lot here, yeah.</p> <p>2 Q. Okay. Got you.</p> <p>3 And this has to do with the Alterix S-1</p> <p>4 comments and it's a red line, do you see that? And</p> <p>5 he's just saying, "attached please find our comments</p> <p>6 with the latest draft of the S-1?"</p> <p>7 A. Yes, I see that, yeah.</p> <p>8 Q. Okay. And I'm just going to go from that</p> <p>9 to the attachment, which is this one here, Plaintiff's</p> <p>10 Exhibit 99. Do you see this, 99?</p> <p>11 A. Yeah, it's got blue and red on it, yeah.</p> <p>12 Q. That's right, blue and red. And you'll</p> <p>13 see that in this one on the third page, all right, it's</p> <p>14 blue and red, all right, do you see this?</p> <p>15 A. Yes.</p> <p>16 Q. There's an assertion that Alex -- that</p> <p>17 Greenberg has made to the third page of the draft, and</p> <p>18 it's, this is, rather than before it said "this is an</p> <p>19 initial public offering", it says, "this is a firm</p> <p>20 commitment initial public offering." Do you see that?</p> <p>21 A. I do see that, yes.</p> <p>22 Q. Okay, all right. And this came from</p> <p>23 Greenberg, and this is right after they sent the</p> <p>24 underwriting agreement proposed insertion, and they</p> <p>25 followed it up with this change to the draft that was</p>

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<p style="text-align: right;">Page 86</p> <p>1 intended to be filed in April. And were you aware of</p> <p>2 the fact that, that the -- that the -- that Greenberg</p> <p>3 was -- well, forget that question. Yeah, let me just</p> <p>4 ask the question. There's not one in front of you</p> <p>5 there, sorry. Your lawyer, your counsel will tell you</p> <p>6 don't answer, don't say anything, don't answer, ask the</p> <p>7 question.</p> <p>8 Were you aware of the fact that</p> <p>9 Greenberg's responsibilities during this period of time</p> <p>10 was to assist Alexander Capital in determining</p> <p>11 its -- determining the description of the services that</p> <p>12 it was providing regarding the Alterix offering, was</p> <p>13 that your understanding?</p> <p>14 A. Again, I apologize.</p> <p>15 MR. WARD: Objection, vague and misstates</p> <p>16 the record.</p> <p>17 MR. SCHLICHTMANN: Okay, I don't want it</p> <p>18 say it then, all right.</p> <p>19 Q. Were you aware that Greenberg Traurig was</p> <p>20 providing services to Alexander Capital to assist it</p> <p>21 regarding providing its underwriting services to the</p> <p>22 Alterix offering?</p> <p>23 MR. WARD: Objection, confusing.</p> <p>24 MR. SCHLICHTMANN: Okay, then forget it.</p> <p>25 Q. Did you understand that Alexander -- that</p>	<p style="text-align: right;">Page 87</p> <p>1 Greenberg Traurig, I think you've already said this,</p> <p>2 Greenberg Traurig was Alexander Capital's counsel at</p> <p>3 this time, right, regarding the Alterix offering?</p> <p>4 A. It's my recollection, yes.</p> <p>5 Q. All right. Well, that's good, thank you.</p> <p>6 A. Just, can you scroll up to the first</p> <p>7 page?</p> <p>8 Q. Oh, I'm sorry, sure.</p> <p>9 A. No, no, no, that's fine. I just wanted</p> <p>10 to see the date at the top. Okay, yeah.</p> <p>11 Q. Yeah, but it's actually March, can you go</p> <p>12 to the --</p> <p>13 A. That's --</p> <p>14 Q. Okay. It's March 30th, 2015, the</p> <p>15 attachment.</p> <p>16 MR. SCHLICHTMANN: Okay. All right. All</p> <p>17 right.</p> <p>18 A. Thank you.</p> <p>19 Q. Yup, yup, no problem.</p> <p>20 MR. SCHLICHTMANN: Go to -- all right.</p> <p>21 Q. Now, now, yeah, good, all right.</p> <p>22 Now, were you aware that the first</p> <p>23 confidential filing of the Alterix offering was made in</p> <p>24 early April of 2015, were you aware of that?</p> <p>25 A. I don't recall, but --</p>
<p style="text-align: right;">Page 88</p> <p>1 Q. I want you to assume that that's the</p> <p>2 case.</p> <p>3 A. Okay.</p> <p>4 Q. And I'm going to show you an exhibit.</p> <p>5 This is Exhibit 142, and it's from Greenberg to you and</p> <p>6 Mr. Mooney and Mr. Carlin, with a cc to other Greenberg</p> <p>7 lawyers. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it says, "Alterix FINRA filing.</p> <p>10 Attachments FINRA filing 4/10/15." Do you see that?</p> <p>11 A. Yeah.</p> <p>12 Q. Now, it's all blacked out because it</p> <p>13 involves attorney-client conversations, right? But the</p> <p>14 attachment to it is a, dated April 10th, 2015, and it's</p> <p>15 the, an application to FINRA. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, could you just, we're going</p> <p>18 to just scroll through it, it's 12 pages, but just</p> <p>19 generally scroll through it.</p> <p>20 All right, does this refresh your</p> <p>21 recollection at all, do you recognize this document at</p> <p>22 all?</p> <p>23 MR. WARD: Just for the --</p> <p>24 A. No.</p> <p>25 MR. WARD: I'm sorry to interrupt, just</p>	<p style="text-align: right;">Page 89</p> <p>1 for the record it's 142 A, Plaintiff's Exhibit</p> <p>2 142 A.</p> <p>3 MR. SCHLICHTMANN: I'm sorry, did I not</p> <p>4 say that? I'm sorry, very good. Thank you,</p> <p>5 Bryan. 142 A.</p> <p>6 A. No, I don't recall this document.</p> <p>7 Q. Okay. Are you familiar with the fact or</p> <p>8 that at some point when you -- that Alexander Capital</p> <p>9 had the obligation if it is seeking to underwrite an</p> <p>10 offering, that when the offering is first filed</p> <p>11 confidentially, that they have an obligation to notify</p> <p>12 FINRA, did you have any understanding regarding that?</p> <p>13 A. I don't -- I don't know or recall, but.</p> <p>14 Q. Do you know now that that's a</p> <p>15 requirement?</p> <p>16 A. No, I don't know that it's a requirement.</p> <p>17 Q. Okay. Do you, you saw that this</p> <p>18 attachment, which is the April 10th, 2015 application</p> <p>19 to FINRA, was attached to an email that was sent to</p> <p>20 you. Does this in any way refresh your recollection</p> <p>21 that after the filing of the April draft Alterix</p> <p>22 offering that Alexander Capital through Greenberg</p> <p>23 submitted an application to FINRA, are you aware of</p> <p>24 that at all?</p> <p>25 A. I don't recall. But you showing me the</p>

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<p style="text-align: right;">Page 90</p> <p>1 email --</p> <p>2 Q. Yes.</p> <p>3 A. -- shows me that yes.</p> <p>4 Q. Okay. Do you remember having any</p> <p>5 involvement or any discussions regarding the filing of</p> <p>6 this FINRA application?</p> <p>7 A. No. I don't recall.</p> <p>8 Q. Do you know the, do you know now the</p> <p>9 purpose of such an application?</p> <p>10 A. No. No. No now implies that I didn't</p> <p>11 know then.</p> <p>12 Q. Well, is your understanding then the same</p> <p>13 as now or is it different?</p> <p>14 A. No, it's the same.</p> <p>15 Q. Okay. And do, so maybe you said this,</p> <p>16 but what is your understanding, if any, as to the</p> <p>17 purpose of this filing by Greenberg on behalf of</p> <p>18 Alexander Capital at the time on April 10th, 2015?</p> <p>19 A. It's my understanding that our attorneys</p> <p>20 notified FINRA of a potential offering.</p> <p>21 Q. All right. And the terms of it?</p> <p>22 A. I don't know.</p> <p>23 Q. All right, do you see -- all right, at</p> <p>24 the end of this exhibit if we just scroll down, it</p> <p>25 talks about the issuer, do you see at the top Alterix?</p>	<p style="text-align: right;">Page 91</p> <p>1 A. Yes.</p> <p>2 Q. Okay. It says the anticipated effective</p> <p>3 date is as soon as May 29th, 2015. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it tells them about the filing of the</p> <p>6 confidential filing in April, right, do you see that,</p> <p>7 April 9th?</p> <p>8 A. Yes.</p> <p>9 Q. And its proposed maximum aggregate</p> <p>10 offering price of 19,744,000?</p> <p>11 A. Yes.</p> <p>12 Q. And it also on the next page it says,</p> <p>13 under "distribution method" it says "firm commitment."</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Okay. All right.</p> <p>16 And that it was filed by Mr. Marsico, all</p> <p>17 right, that's the next page, do you see that,</p> <p>18 Mr. Marsico at Greenberg?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. All right, now we've already gone</p> <p>21 over that on May 15th, 2015 FINRA sent in response to</p> <p>22 this application the so-called unreasonable letter,</p> <p>23 we've gone through that. And then an application was</p> <p>24 made for a so-called 1017, we went through that. And</p> <p>25 then there was the FINRA restriction letter of June</p>
<p style="text-align: right;">Page 92</p> <p>1 11th, we went through that. Are you -- and that we</p> <p>2 also went, I told you that there was a June 2015 filing</p> <p>3 similar to the April filing. And then there was an</p> <p>4 August 5th filing similar to the April filing regarding</p> <p>5 the Alterix offering in 2015. I mentioned that to you</p> <p>6 before. Shall I, is that, is that, are you --</p> <p>7 A. What, what, sorry, and I don't mean to</p> <p>8 interrupt.</p> <p>9 Q. Yeah.</p> <p>10 A. When you say filing, what are you talking</p> <p>11 about?</p> <p>12 Q. Yeah, let me be clear, yeah, very good.</p> <p>13 That there was an April filing of the draft</p> <p>14 registration statement, right, and then there was the</p> <p>15 application to FINRA that we just went over. There was</p> <p>16 then the restriction letter. There was the 1017 in</p> <p>17 early June to get firm commitment authorization.</p> <p>18 Right?</p> <p>19 MR. WARD: Is this a question? I'm</p> <p>20 sorry, just to --</p> <p>21 MR. SCHLICHTMANN: I'm just, I'm, yes,</p> <p>22 it's a question. I'm just giving the reminding</p> <p>23 about the events we went through, right.</p> <p>24 MR. WARD: So you're not asking, are you</p> <p>25 asking whether you, you had asked about whether</p>	<p style="text-align: right;">Page 93</p> <p>1 you discussed it or whether he --</p> <p>2 MR. SCHLICHTMANN: No, I did, no, I'm not</p> <p>3 asking a question, I'm just giving the premise to</p> <p>4 my question, all right, because he asked about</p> <p>5 the filing.</p> <p>6 Q. So we have an April 2015 first draft</p> <p>7 registration filing followed by the application that we</p> <p>8 just went over, which was followed in May 15th, 2015</p> <p>9 with the unreasonable letter that we went over, which</p> <p>10 was followed on June 3, 2015 with the 1017 application</p> <p>11 that we went over. And then it was followed on June</p> <p>12 11th with the FINRA letter restricting, imposing</p> <p>13 restrictions on the business activities of Alexander</p> <p>14 that we went over. And then there was the filing in</p> <p>15 June, late June of a second private registration</p> <p>16 statement regarding the Alterix offering. Does that</p> <p>17 help refresh your recollection as to those events?</p> <p>18 A. I don't --</p> <p>19 MR. WARD: Objection, vague.</p> <p>20 A. I don't, I don't recall specific timing.</p> <p>21 And I don't think we've discussed the last thing you</p> <p>22 mentioned.</p> <p>23 Q. The June filing?</p> <p>24 A. Yeah. And I apologize if --</p> <p>25 Q. Okay, that's fine.</p>

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<p style="text-align: right;">Page 94</p> <p>1 A. Yeah.</p> <p>2 Q. All right, great, all right, I appreciate</p> <p>3 that, thank you. So let's go to --</p> <p>4 A. But, but to --</p> <p>5 Q. Yeah, go ahead. Go ahead.</p> <p>6 A. Was there a question?</p> <p>7 Q. No. I'm going to now go to what you just</p> <p>8 --</p> <p>9 A. Okay.</p> <p>10 Q. -- that you said about not -- that we</p> <p>11 haven't really gone over this. So let me show you this</p> <p>12 email, which is Exhibit 102, which is Greenberg to a</p> <p>13 whole bunch of people, including you in there. Do you</p> <p>14 see that?</p> <p>15 A. I see it, yeah.</p> <p>16 Q. Okay. Subject, "Alterix DRS comment</p> <p>17 letter response." Do you see that?</p> <p>18 A. I see that.</p> <p>19 Q. "Attachment, Greenberg Traurig comments</p> <p>20 to Form S-1 June 11th," referring to the latest draft</p> <p>21 that Greenberg put together. Okay? And it says, "Here</p> <p>22 is Greenberg's comments to the revived S-1." And it</p> <p>23 was sent to you on June 11th. That's Exhibit 102. And</p> <p>24 the attachment has got Greenberg's handwritings on it,</p> <p>25 it says "GT comments", do you see that?</p>	<p style="text-align: right;">Page 95</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And it's the revisions to the</p> <p>3 April 8th draft. Do you see that up there?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And in this you see the second</p> <p>6 draft on the second page has, "this is a firm</p> <p>7 commitment initial public offering." Do you see that?</p> <p>8 A. Yeah. Yes.</p> <p>9 Q. Okay. That, so between the April draft</p> <p>10 and this Greenberg's proposed second draft, the June,</p> <p>11 this is a firm commitment offering is still there, that</p> <p>12 hasn't been changed, that statement; correct?</p> <p>13 A. Yes.</p> <p>14 MR. WARD: I'm going to just object to</p> <p>15 the misstating the record.</p> <p>16 MR. SCHLICHTMANN: All right, I don't</p> <p>17 want to do that.</p> <p>18 Q. So on this exhibit, right, Exhibit 103,</p> <p>19 which is the attachment to the June 11th email to</p> <p>20 Greenberg, to everybody including yourself, indicating</p> <p>21 their comments on the revisions to the April 8th draft,</p> <p>22 this is a firm commitment initial public offering, that</p> <p>23 there's no comments about that. Do you see that?</p> <p>24 A. I see that.</p> <p>25 Q. Okay. All right. All right. Then but</p>
<p style="text-align: right;">Page 96</p> <p>1 you have no memory of getting anything from anyone</p> <p>2 about the second proposed filing of the Alterix</p> <p>3 offering in June, you don't remember that at all?</p> <p>4 A. No, I don't recall that email.</p> <p>5 Q. All right. And do you have any reason to</p> <p>6 believe that it didn't come to you, that you didn't</p> <p>7 have an opportunity to review it or one part of it?</p> <p>8 A. I, I don't recall, but no. I see that, I</p> <p>9 see the email.</p> <p>10 Q. Okay. So let's go to five. All right,</p> <p>11 I'm just going to, yeah. Exhibit 30 is the August 5th,</p> <p>12 2015 third draft of the registration statement, all</p> <p>13 right? Just going through that front page there, is</p> <p>14 that familiar to you at all, the Alterix, you know, as</p> <p>15 one of the Alterix private registration filings?</p> <p>16 A. No, not specifically, but I'll say that</p> <p>17 this looks like a registration statement.</p> <p>18 Q. Okay, all right. And you see on August</p> <p>19 5th, this is dated August 5th, 2015, do you see that at</p> <p>20 the top?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And on the second page it says,</p> <p>23 "this is the firm commitment initial public offering."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. All right. Do you remember that on</p> <p>2 August 5th or that in August there was a third filing</p> <p>3 of a draft registration statement of the -- that</p> <p>4 Alexander Capital was involved with?</p> <p>5 A. No, I'm sorry, I just don't recall.</p> <p>6 Q. Okay.</p> <p>7 A. Specific dates.</p> <p>8 Q. Now, we already went over, so I will now</p> <p>9 show you Plaintiff's, yeah, this is Plaintiff's Exhibit</p> <p>10 145, all right. It's from you, it's dated September</p> <p>11 5th -- 15th, 2015 to Greenberg, to Mr. Marsico,</p> <p>12 "subject Alterix, attachment, Alterix Alexander</p> <p>13 amendment to engagement, fully executed 8/18/15." Do</p> <p>14 you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Now, it's blacked out because it covers</p> <p>17 attorney-client discussions, right, but it's to you,</p> <p>18 all right. And the attachment, this is Exhibit 145,</p> <p>19 and the attachment is Exhibit 145 A, which is a letter</p> <p>20 dated August 17th, Pat Mooney, CEO of Alterix, re</p> <p>21 second amendment engagement letter, "Dear Dr. Mooney,</p> <p>22 this letter serves as an amendment to that certain</p> <p>23 engagement letter of July 29, 2014." And then it says,</p> <p>24 under paragraph number one, "the change is a cash</p> <p>25 placement fee of ten percent on any bridge or private</p>

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<p style="text-align: right;">Page 98</p> <p>1 financing completed by the company during the term of</p> <p>2 this agreement." Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Okay. Do you remember that, that there</p> <p>5 was a placement done by Alexander Capital in August for</p> <p>6 bridge capital funding for the Alterix offering?</p> <p>7 A. I don't. I would have to check to</p> <p>8 specific dates. I don't recall specific dates.</p> <p>9 Q. Do you have a general memory that there</p> <p>10 was, again August, that there was a cap -- a bridge</p> <p>11 lend -- loan secured by Alexander Capital for the</p> <p>12 Alterix offering?</p> <p>13 A. Again, I don't know about specific August</p> <p>14 time frame.</p> <p>15 Q. In the general time frame, it doesn't</p> <p>16 have to be August, September, whatever?</p> <p>17 A. I don't recall specifically. I know the</p> <p>18 company raised capital privately.</p> <p>19 Q. And do you know that the, do you have any</p> <p>20 memory that the company, that actually they closed the</p> <p>21 first part of that on August 17th, 2015, the same time</p> <p>22 as this letter is dated, do you know that?</p> <p>23 A. No.</p> <p>24 Q. Okay. Do you have any memory that the,</p> <p>25 that the company increased its placement fee from eight</p>	<p style="text-align: right;">Page 99</p> <p>1 percent to ten percent regarding bridge lending for the</p> <p>2 Alterix offering?</p> <p>3 A. No, I don't recall that.</p> <p>4 Q. Okay. But you do note that this email</p> <p>5 has this attachment regarding that very thing, is that</p> <p>6 right, that was to you?</p> <p>7 A. I see, I see the, the, yeah, the letter</p> <p>8 or the email.</p> <p>9 Q. Okay. I'm going to show you also Exhibit</p> <p>10 146. And this is from Mr. Marsico on September 15th,</p> <p>11 2015 to you, concerning the same thing, again blacked</p> <p>12 out because it involves attorney-client conversations.</p> <p>13 And, and again, it has Exhibit 146 A again is the</p> <p>14 August 17th, 2015 amended to the engagement letter.</p> <p>15 Now, you have no memory -- does this help refresh your</p> <p>16 recollection at all as to any of this?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 A. But --</p> <p>20 Q. No reason to doubt it happened?</p> <p>21 A. No. I see the emails.</p> <p>22 Q. No doubt that you received these emails</p> <p>23 as indicated?</p> <p>24 A. No doubt.</p> <p>25 Q. All right. Are you aware of the fact</p>
<p style="text-align: right;">Page 100</p> <p>1 that the bridge lenders received certain disclosures as</p> <p>2 part of the package of information sent to them</p> <p>3 regarding providing a bridge loan to the Alterix</p> <p>4 offering?</p> <p>5 A. I don't recall specifically, no.</p> <p>6 Q. Do you remember ever receiving</p> <p>7 information from anyone from Alexander Capital</p> <p>8 indicating the information that was being given to the</p> <p>9 bridge lenders?</p> <p>10 A. I don't recall specifically, but --</p> <p>11 Q. All right, I'm going to show you what's</p> <p>12 been marked as Exhibit 9.</p> <p>13 MR. SCHLICHTMANN: Oh, yeah, right, I'm</p> <p>14 sorry.</p> <p>15 MR. WARD: And Jan, just while we're --</p> <p>16 MR. SCHLICHTMANN: Yeah, yeah.</p> <p>17 MR. WARD: -- so it's clear, we had, we</p> <p>18 had talked with Mr. Gazdak and discussed</p> <p>19 potentially taking a break at one for lunch.</p> <p>20 MR. SCHLICHTMANN: Okay.</p> <p>21 MR. WARD: But let me know what are you</p> <p>22 thinking in terms of how much time you have left?</p> <p>23 MR. SCHLICHTMANN: I'm going to try and,</p> <p>24 I think the total time I've used so far is what?</p> <p>25 THE VIDEOGRAPHER: Two hours, roughly.</p>	<p style="text-align: right;">Page 101</p> <p>1 MR. SCHLICHTMANN: It probably would be</p> <p>2 best to take a lunch, a short lunch.</p> <p>3 MR. WARD: Sure.</p> <p>4 MR. SCHLICHTMANN: But I will try and be</p> <p>5 very quick after the lunch. Well, I guess we've</p> <p>6 got 15 minutes left here, right? So, you know,</p> <p>7 what kind of lunch do you want to take, like 30</p> <p>8 minutes or what's your comfort level for lunch?</p> <p>9 Because I'm going to try and, you know, keep it</p> <p>10 to an hour afterwards after lunch or so.</p> <p>11 MR. WARD: Yeah. Just to be clear,</p> <p>12 you've got seven hours obviously, so.</p> <p>13 MR. SCHLICHTMANN: No, and I appreciate</p> <p>14 that. I'm going to, what I'm trying to engage</p> <p>15 you that I'm going to try and keep it on the</p> <p>16 short rather than the longer.</p> <p>17 MR. WARD: Yeah. And I'm not holding you</p> <p>18 to anything, just --</p> <p>19 MR. SCHLICHTMANN: No, no, I -- so if you</p> <p>20 want to take a longer lunch that's fine too, you</p> <p>21 tell me, whatever. What's --</p> <p>22 MR. WARD: Jonathan, what do you, what do</p> <p>23 you want? It's up to you.</p> <p>24 THE WITNESS: A half hour is fine, I</p> <p>25 mean.</p>

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<p style="text-align: right;">Page 102</p> <p>1 MR. SCHLICHTMANN: As opposed to 45</p> <p>2 minutes or an hour, right?</p> <p>3 THE WITNESS: Yeah.</p> <p>4 MR. SCHLICHTMANN: I don't want you to --</p> <p>5 MR. WARD: Let's say, let's say 45,</p> <p>6 because maybe --</p> <p>7 MR. SCHLICHTMANN: That's right, it's</p> <p>8 always 45, I agree. All right, great, 45. All</p> <p>9 right, so we'll do 15 minutes and then take 45?</p> <p>10 MR. WARD: If that works for you.</p> <p>11 MR. SCHLICHTMANN: Yeah, yeah, let me</p> <p>12 just, fine. Okay.</p> <p>13 So did I get you off track there? It's</p> <p>14 this one down here, right, over, right?</p> <p>15 Q. So I'm going to show you Plaintiff's</p> <p>16 Exhibit 9, right, and it's from Bari Latterman to</p> <p>17 Mooney and to yourself. Do you see that? We --</p> <p>18 A. I see it, yes.</p> <p>19 Q. okay. And it's an Alterix securities</p> <p>20 purchase agreement, it's several attachments, including</p> <p>21 disclosure schedules and securities purchase agreement,</p> <p>22 8/14/15. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And it's, Bari Latterman says,</p> <p>25 "currently here are all the attachments I sent for</p>	<p style="text-align: right;">Page 103</p> <p>1 Alterix. I'll revise the wiring instructions", right?</p> <p>2 Do you --</p> <p>3 A. Yes.</p> <p>4 Q. Was, I know I asked you this before but</p> <p>5 just to be clear, was it your understanding that Bari</p> <p>6 Latterman, that Bari Latterman reported to you about</p> <p>7 her activities?</p> <p>8 A. No.</p> <p>9 Q. Was it your understanding that Bari</p> <p>10 Latterman was under your supervision regarding her</p> <p>11 activities?</p> <p>12 A. No.</p> <p>13 Q. Do you have, can you explain why Bari</p> <p>14 Latterman is sending this email to you as well as</p> <p>15 Mr. Mooney about the package of information that's</p> <p>16 going to the Alterix bridge lenders, why would it, do</p> <p>17 you have any explanation as to why it would be coming</p> <p>18 to you?</p> <p>19 A. Not from this email, no.</p> <p>20 Q. Do you have any, based on your experience</p> <p>21 of the operations by Alexander Capital and your</p> <p>22 responsibilities as managing director, any explanation</p> <p>23 as to why you would receive it?</p> <p>24 A. What was the question?</p> <p>25 Q. Well, let me ask it this way. Is it</p>
<p style="text-align: right;">Page 104</p> <p>1 consistent with your understanding of your</p> <p>2 responsibilities of Alexander Capital during this time</p> <p>3 that you would receive an email from Ms. Latterman as</p> <p>4 indicated here, including, which included the, all the</p> <p>5 attachments that are sent to potential bridge lenders</p> <p>6 regarding Alterix?</p> <p>7 A. No. But again, I don't, I don't know</p> <p>8 what the specific -- specificity of her forwarding</p> <p>9 those to me is.</p> <p>10 Q. Is it consistent with your duties and</p> <p>11 responsibilities as a managing director?</p> <p>12 A. To receive email from Bari Latterman?</p> <p>13 Again, I don't know what your question is.</p> <p>14 Q. Well, to receive an email like this from</p> <p>15 Bari Latterman at that time with that kind of</p> <p>16 information?</p> <p>17 A. No. I don't recall and no, it's not.</p> <p>18 Again, this is, this is a very small -- I can't opine</p> <p>19 on why she sent this, I don't know.</p> <p>20 Q. But I'm asking a little differently.</p> <p>21 Based on how you know Alexander Capital was working at</p> <p>22 the time and what you were supposed to be doing in your</p> <p>23 job, and how Ms. Latterman's activities, you know,</p> <p>24 interconnected with what you were doing, is this</p> <p>25 consistent with her sending it or this is something</p>	<p style="text-align: right;">Page 105</p> <p>1 that you think is unusual?</p> <p>2 A. I don't think it's consistent nor</p> <p>3 unusual. I don't know the reason, the specific reason</p> <p>4 for her sending that.</p> <p>5 Q. And you have no memory of interacting</p> <p>6 with Ms. Latterman about the Alterix offering?</p> <p>7 A. I, I don't recall specifics about</p> <p>8 interactions with, with Bari Latterman.</p> <p>9 Q. How about generally?</p> <p>10 A. But --</p> <p>11 Q. How about generally?</p> <p>12 A. Generally I -- I -- yes.</p> <p>13 Q. You would interact with Ms. Latterman</p> <p>14 regarding the Alterix offering?</p> <p>15 A. I could interact.</p> <p>16 Q. Okay. Okay.</p> <p>17 Did you, did you have any understanding</p> <p>18 that you had any responsibilities as managing director</p> <p>19 to review any materials that were intended to be sent</p> <p>20 to the bridge lenders regarding the Alterix offering?</p> <p>21 A. Responsibility, define responsibility to</p> <p>22 whom.</p> <p>23 Q. Okay. Did you have a, what was your</p> <p>24 understanding as to whether or not as managing director</p> <p>25 of Alexander Capital during 2015, whether any of your</p>

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<p style="text-align: right;">Page 106</p> <p>1 responsibilities included reviewing any materials that</p> <p>2 were proposed to be sent to bridge lenders regarding</p> <p>3 the Alterix offering?</p> <p>4 MR. WARD: Objection. Confusing,</p> <p>5 compound.</p> <p>6 MR. SCHLICHTMANN: Confusing, all right,</p> <p>7 I'll withdraw it.</p> <p>8 Q. In 2015 did you have an understanding, or</p> <p>9 yeah, what was your understanding as of 2015 as to</p> <p>10 whether or not as managing director you had any</p> <p>11 responsibilities regarding any materials that were</p> <p>12 intended to be sent to bridge lenders regarding the</p> <p>13 Alterix offering?</p> <p>14 A. Again, and I don't -- define</p> <p>15 responsibilities to whom.</p> <p>16 Q. As part of your job.</p> <p>17 A. To whom?</p> <p>18 Q. To the company.</p> <p>19 A. Which company?</p> <p>20 Q. Alexander Capital.</p> <p>21 A. No.</p> <p>22 Q. So is it your testimony that as managing</p> <p>23 director you had no responsibilities regarding</p> <p>24 materials that were intended to be sent to potential</p> <p>25 bridge lenders regarding the Alterix offering?</p>	<p style="text-align: right;">Page 107</p> <p>1 A. Responsibilities to Alexander Capital?</p> <p>2 Q. Yes. Your responsibilities as managing</p> <p>3 director of Alexander Capital.</p> <p>4 A. To Alexander Capital? No.</p> <p>5 Q. To anyone else?</p> <p>6 A. Potentially, if, if someone asked me to</p> <p>7 review things.</p> <p>8 Q. Okay. You see from this email we just</p> <p>9 went over you were sent stuff from Ms. Latterman</p> <p>10 regarding the package of information that was going to</p> <p>11 potential bridge lenders regarding the Alterix IPO; is</p> <p>12 that right?</p> <p>13 A. I see that she sent them.</p> <p>14 Q. Okay. So the fact that she sent them,</p> <p>15 does that not, does that not trigger or, let me say is</p> <p>16 that not an indication that you had some kind of</p> <p>17 responsibility regarding that material?</p> <p>18 A. No.</p> <p>19 Q. To your knowledge did you ever, do you</p> <p>20 have any memory of ever reviewing material that was</p> <p>21 intended to be sent to bridge lenders regarding the</p> <p>22 Alterix offering?</p> <p>23 A. I don't recall specifically.</p> <p>24 Q. Generally?</p> <p>25 A. I just don't recall. I apologize.</p>
<p style="text-align: right;">Page 108</p> <p>1 Q. That's all right. So I showed you the</p> <p>2 Exhibit 9. And I'm going to just show you some of the</p> <p>3 attachments. This is Exhibit 9 D, disclosure schedules</p> <p>4 for stock purchase agreement between Alterix and each</p> <p>5 purchaser identified on the signature pages, dated</p> <p>6 August 13th, 2015. The first page.</p> <p>7 A. Yup.</p> <p>8 Q. Yeah. Oh, that's the wrong one. That's</p> <p>9 it. Oh. Sorry, we were looking at different things.</p> <p>10 Disclosure schedules, it's 9 D, disclosure schedules to</p> <p>11 stock purchase agreement, okay, between Alterix and</p> <p>12 each purchaser, right, dated August 13th, 2015. Do you</p> <p>13 see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And I'm just going to scroll</p> <p>16 slowly through it here. "In connection with that</p> <p>17 certain purchase agreement dated as of August 13th</p> <p>18 between Alterix and each purchaser identified on the</p> <p>19 signature pages, the company delivers these disclosure</p> <p>20 schedules." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And then it has a schedule, 3.1 A, that</p> <p>23 doesn't have anything. Schedule 3.1 G talks about</p> <p>24 capitalization. Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Okay. And then under 3.1 I do you see in</p> <p>2 paragraph two it says, "the company filed with the</p> <p>3 Securities and Exchange Commission a draft registration</p> <p>4 statement on Form S-1 on April 9th, amendment number</p> <p>5 one, a draft on June 30th, and a draft on August 5th,</p> <p>6 collectively draft registration statements." Do you</p> <p>7 see that?</p> <p>8 A. Yes.</p> <p>9 Q. And in each case the company requested</p> <p>10 confidential treatment.</p> <p>11 Was it your understanding at any time</p> <p>12 that the bridge lenders were being, that the -- that</p> <p>13 potential bridge lenders, who were considering being</p> <p>14 bridge lenders on the Alterix offering, were being</p> <p>15 provided information about the filing of the</p> <p>16 registration statements referred to in this paragraph,</p> <p>17 were you aware of that?</p> <p>18 A. I'm sorry, and I apologize.</p> <p>19 Q. That's all right.</p> <p>20 A. That was a long statement.</p> <p>21 Q. All right, I want to make sure you --</p> <p>22 I'll say it again. Were you aware at any time that</p> <p>23 the, that potential bridge lenders on the Alterix</p> <p>24 offering were being notified about the fact that draft</p> <p>25 registration statements were being filed in April and</p>

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<p style="text-align: right;">Page 110</p> <p>1 June and August of 2015 regarding the Alterix offering,</p> <p>2 were you aware of that at any time?</p> <p>3 A. I don't, I don't recall. I mean, I</p> <p>4 really don't.</p> <p>5 Q. Do you have any reason to, well, you have</p> <p>6 no reason -- you don't know whether you knew or you</p> <p>7 didn't know, or you know you didn't know?</p> <p>8 A. No, I just don't recall whether I,</p> <p>9 whether I was aware or not.</p> <p>10 Q. Okay. And this email to you at the time</p> <p>11 of November, indicating what is being sent to the</p> <p>12 potential bridge lenders, including this disclosure</p> <p>13 schedule we just went over, that doesn't help refresh</p> <p>14 your recollection at all --</p> <p>15 A. No.</p> <p>16 Q. -- about what you knew --</p> <p>17 A. No.</p> <p>18 Q. -- that they were being informed about</p> <p>19 these filings?</p> <p>20 A. No, I -- it doesn't, it doesn't mean that</p> <p>21 now I recall, no.</p> <p>22 Q. Okay.</p> <p>23 MR. SCHLICHTMANN: Here we go, here.</p> <p>24 Q. I'm going to show you Exhibit 117. And</p> <p>25 this is from Pat Mooney to an Adam Cichetti. Do you</p>	<p style="text-align: right;">Page 111</p> <p>1 know an Adam Cichetti?</p> <p>2 A. Yes.</p> <p>3 Q. Who is he?</p> <p>4 A. He's a former employee of Alexander</p> <p>5 Capital.</p> <p>6 Q. And would you know in 2015 what his</p> <p>7 responsibilities were?</p> <p>8 A. I don't know what his responsibilities</p> <p>9 were.</p> <p>10 Q. Okay. Do you see in this Pat Mooney is</p> <p>11 saying, "we just raised about \$5 million at a \$75</p> <p>12 million valuation." Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. Okay. And then he talks about the money</p> <p>15 that was raised, do you see that, one, two, three?</p> <p>16 A. Yes, I see that.</p> <p>17 Q. Okay. Were you aware at any time as to</p> <p>18 what valuation Alexander Capital was placing on the</p> <p>19 Alterix offering on a pre-IPO basis?</p> <p>20 A. No, I don't recall specific -- I don't</p> <p>21 recall.</p> <p>22 Q. If I represent to you that in emails like</p> <p>23 this they were referring to a \$75 million valuation,</p> <p>24 Alexander Capital people were referring, like this one,</p> <p>25 referring to a \$75 million valuation used to do the</p>
<p style="text-align: right;">Page 112</p> <p>1 bridge capital raise, is that consistent with your</p> <p>2 memory?</p> <p>3 A. I, I don't recollect any specific</p> <p>4 valuations.</p> <p>5 Q. Do you have any reason to not, to believe</p> <p>6 that that was not the valuation that Alexander Capital</p> <p>7 was placing?</p> <p>8 A. I have no reason to believe it or not</p> <p>9 believe it. I just don't know.</p> <p>10 Q. Okay. All right. All right.</p> <p>11 MR. SCHLICHTMANN: Now we are at one</p> <p>12 o'clock. So we should break now and have the 45</p> <p>13 minute lunch?</p> <p>14 MR. WARD: Sounds good. Off the record?</p> <p>15 MR. SCHLICHTMANN: Yes, go ahead.</p> <p>16 THE VIDEOGRAPHER: Okay, we're going off</p> <p>17 the record. The time is 1:01 p.m.</p> <p>18 (Recess taken)</p> <p>19 THE VIDEOGRAPHER: okay. We are back on</p> <p>20 the record. The time is 1:48 p.m.</p> <p>21 BY MR. SCHLICHTMANN:</p> <p>22 Q. Okay, Mr. Gazdak, can you hear me all</p> <p>23 right?</p> <p>24 A. Can you move a little closer or --</p> <p>25 Q. Okay. Can you hear me all right?</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. WARD: Middling.</p> <p>2 MR. SCHLICHTMANN: Middling, all right.</p> <p>3 Q. Hello, how's that? No?</p> <p>4 A. That's better.</p> <p>5 Q. Sound is clear, am I clear?</p> <p>6 A. Yes</p> <p>7 Q. Okay, great, all right. At any time,</p> <p>8 please, I know you won't be shy. All right. So are we</p> <p>9 ready to go, everybody is ready? All right.</p> <p>10 Mr. Gazdak, are you familiar with the, as</p> <p>11 between 20 -- May of 2014 and November of 2015, were</p> <p>12 you familiar with the, a process by which issuing</p> <p>13 companies can file so-called confidential registration</p> <p>14 statements and then get comments back from Fincorp</p> <p>15 before they actually file or decide to file a S-1</p> <p>16 publicly? Are you, were you familiar with that process</p> <p>17 between 2014 and November 2015?</p> <p>18 A. No. Define finish core?</p> <p>19 Q. All right, so what did I say. CorpFin,</p> <p>20 CorpFin, corporate finance, SEC's corporate finance.</p> <p>21 You're familiar with corp, yeah, corporate finance of</p> <p>22 the SEC, right, that looks over filings of registration</p> <p>23 filings and makes comments?</p> <p>24 A. I'm familiar with the SEC making comments</p> <p>25 to registration letters.</p>

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<p style="text-align: right;">Page 114</p> <p>1 Q. Are you --</p> <p>2 A. Registration letters.</p> <p>3 Q. And you --</p> <p>4 A. Statements.</p> <p>5 Q. And you -- statements. And you're</p> <p>6 corporate with CorpFin as the reviewing part of the SEC</p> <p>7 that does that, the corporate finance division of the</p> <p>8 SEC?</p> <p>9 A. No, but I'm not sure what the division is</p> <p>10 called, but I'm not going to say it's not.</p> <p>11 Q. Okay. Does, are you aware of the fact</p> <p>12 that it's often, the corporate finance division of the</p> <p>13 SEC is often abbreviated as CorpFin or spoken of by</p> <p>14 people in your industry as CorpFin as opposed to the</p> <p>15 corporate finance division of the SEC, or you're</p> <p>16 unfamiliar with that?</p> <p>17 A. Not to me, no.</p> <p>18 Q. All right. In May -- prior to May of</p> <p>19 2014 had you participated in the filing of a, or been</p> <p>20 involved in any way in the filing of private, the</p> <p>21 so-called confidential registration statements seeking</p> <p>22 comments from the corporate finance division of the</p> <p>23 sec?</p> <p>24 A. I don't recall specifically prior to</p> <p>25 2014. I'd have to check.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. During May of 2014 to November of 2015 do</p> <p>2 you have any memory of being involved in any way with</p> <p>3 the filing of registration, private confidential</p> <p>4 registration statements on behalf of an issuing company</p> <p>5 involving Alexander Capital and receiving back comments</p> <p>6 from those filings from the corporate finance division</p> <p>7 of the SEC?</p> <p>8 A. I don't recall specific dates. I'd need</p> <p>9 to look them up.</p> <p>10 Q. Do you remember, regardless of the dates</p> <p>11 do you remember being aware or involved in any way with</p> <p>12 that process as a managing director of Alexander</p> <p>13 Capital?</p> <p>14 A. In any company under any time frame, is</p> <p>15 that, sorry I'm just trying to clarify.</p> <p>16 Q. While you're managing director with</p> <p>17 Corp. -- with Alexander Capital from May 2014 to</p> <p>18 November of 2015.</p> <p>19 A. Yeah. I'd have to, I'd have to look at,</p> <p>20 you know, specific dates and just to double check</p> <p>21 dates.</p> <p>22 Q. Okay. And but do you have a memory,</p> <p>23 between May 2014 and the present as managing director,</p> <p>24 of being involved in that process?</p> <p>25 A. Involved, define involved. The SEC --</p>
<p style="text-align: right;">Page 116</p> <p>1 Q. Having some responsibility regarding it,</p> <p>2 like reviewing registration statements, the disclosures</p> <p>3 and registration statements, reviewing the comments.</p> <p>4 A. Okay. And I apologize, I'm not trying to</p> <p>5 be, but I thought you were asking if I'd been in --</p> <p>6 seeing comments letters from the SEC. Now you're</p> <p>7 asking about, I just want to make sure you're --</p> <p>8 Q. All right, well, let's start with that,</p> <p>9 that's fine. Are you aware, do you have any memory of</p> <p>10 seeing comment letters from the corporate finance</p> <p>11 division of the SEC regarding the filing of</p> <p>12 confidential registration statements at any time while</p> <p>13 working with Alexander Capital?</p> <p>14 A. Yes. But I'd have to check specific time</p> <p>15 frames and specific instances, but yes.</p> <p>16 Q. Do you have any memory of being aware of</p> <p>17 comment letters that the corporate finance office gave</p> <p>18 to any Alterix filings, private confidential</p> <p>19 registration filings?</p> <p>20 A. I don't recall, but -- yeah, I don't</p> <p>21 recall specifically.</p> <p>22 Q. All right. So let me show you</p> <p>23 Plaintiff's Exhibit 130, and this is an email from --</p> <p>24 okay.</p> <p>25 MR. SCHLICHTMANN: There it is. Is it</p>	<p style="text-align: right;">Page 117</p> <p>1 sharing now?</p> <p>2 THE VIDEOGRAPHER: There we go.</p> <p>3 MR. SCHLICHTMANN: Okay.</p> <p>4 Q. Do you see an exhibit, the exhibit 130,</p> <p>5 Plaintiff's Exhibit 130 on the screen?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And you see that this is from</p> <p>8 Mr. Marsico at Greenberg dated November 10th, and it's</p> <p>9 to Chris Carlin and to yourself. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And the subject is "SEC comment letter,</p> <p>12 Confidential Inpellis, Inc. S-1 2015 11/10 letter. Do</p> <p>13 you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And the attachment is the Confidential</p> <p>16 Inpellis, Inc. S-1 2015 11/10 letter. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And then it's blacked out because</p> <p>19 it contains attorney-client privileged communications.</p> <p>20 And the attachment to this email is Plaintiff's Exhibit</p> <p>21 131, and if you take a moment to look at that, a letter</p> <p>22 from the division of corporate finance of the SEC dated</p> <p>23 November 10th, 2015. Do you see that?</p> <p>24 A. Yes. I see that.</p> <p>25 Q. Okay. And just first of all, is that</p>

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<p style="text-align: right;">Page 118</p> <p>1 the, do you recognize that as the usual form of the</p> <p>2 so-called corporate finance comment letters to</p> <p>3 registrations that have been filed?</p> <p>4 A. I haven't, I apologize, I haven't seen</p> <p>5 the rest of the letter.</p> <p>6 Q. Oh, okay, fine,</p> <p>7 A. Yeah.</p> <p>8 Q. Sure, go ahead, take your time.</p> <p>9 A. I, I, can't -- yeah, that's good.</p> <p>10 Q. You can give control, if you wouldn't</p> <p>11 mind. We are going to give you control.</p> <p>12 (Witness perusing documents)</p> <p>13 A. Yes, this looks like a comment letter</p> <p>14 from the SEC on the, on the filing.</p> <p>15 Q. Do you have any memory of receiving a</p> <p>16 copy of any comment letters from corporate finance,</p> <p>17 SEC's corporate finance division regarding the</p> <p>18 Alexander -- the Alterix filings, does this help</p> <p>19 refresh your recollection in any way?</p> <p>20 A. I don't recall, but I see that this email</p> <p>21 was sent to me.</p> <p>22 Q. Okay. And if you look, if we go to, on</p> <p>23 the first page it says general, that do you see that?</p> <p>24 A. You can control. You can control.</p> <p>25 Q. Yeah, yeah, thank you.</p>	<p style="text-align: right;">Page 119</p> <p>1 Do you see it says, "we note your</p> <p>2 response, comment one"?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And that's an indication that in</p> <p>5 fact on October 20th the corporate finance office made</p> <p>6 a response to the filing of the October 6th</p> <p>7 registration statement, private registration --</p> <p>8 confidential registration statement filing regarding</p> <p>9 Alterix. And it says, "we note your response to</p> <p>10 comment one; however, you continue to omit disclosure</p> <p>11 containing your previous submissions." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. First of all, were you aware, do you have</p> <p>15 any memory of what corporate finance, whether there was</p> <p>16 any corporate finance responses to Alterix filings in</p> <p>17 which the regulators were discussing the omission of</p> <p>18 certain disclosure that needed to be put back in?</p> <p>19 A. No. I don't recall any of these comment</p> <p>20 letters.</p> <p>21 Q. Okay. Okay. You do see here that the,</p> <p>22 they are saying that "you continue to omit disclosure</p> <p>23 containing your previous submissions." Do you see</p> <p>24 that?</p> <p>25 A. Yes, I see that.</p>
<p style="text-align: right;">Page 120</p> <p>1 Q. Okay. What was your understanding as of</p> <p>2 in 2015, I will say, you know, from May 2014 to</p> <p>3 November 2015 what was your understanding as to the</p> <p>4 requirement or, excuse me, the responsibility of</p> <p>5 Alexander Capital regarding any disclosures that are</p> <p>6 made in registration statements regarding offerings</p> <p>7 that they're involved in --</p> <p>8 MR. WARD: Objection. Vague.</p> <p>9 Q. -- or were involved in? I'm sorry, let</p> <p>10 me do it again. What was your understanding from May</p> <p>11 of 2014 to November 2015 regarding whether or not</p> <p>12 Alexander Capital had any responsibility regarding</p> <p>13 disclosures made in offerings in which they were listed</p> <p>14 as the underwriter?</p> <p>15 A. And I apologize, I'm just going to ask</p> <p>16 for two, two clarifications.</p> <p>17 Q. Sure.</p> <p>18 A. Responsibilities to whom, and disclosures</p> <p>19 by whom?</p> <p>20 Q. The responsibilities of Alexander Capital</p> <p>21 to regarding disclosures that could, in registration</p> <p>22 statements that could then, well, let me take it this</p> <p>23 way. The responsibility, whether or not all -- what</p> <p>24 I'm asking is, did you have an understanding as to</p> <p>25 whether or not Alexander Capital had a responsibility</p>	<p style="text-align: right;">Page 121</p> <p>1 to review and ensure the accuracy of any disclosures in</p> <p>2 a registration statement involving them as an</p> <p>3 underwriter?</p> <p>4 MR. WARD: Objection, vague.</p> <p>5 MR. SCHLICHTMANN: Too vague? Is that an</p> <p>6 objection there, Bryan?</p> <p>7 MR. WARD: Yeah, it's vague, yeah.</p> <p>8 MR. SCHLICHTMANN: Okay.</p> <p>9 Q. So what, did you have an understanding</p> <p>10 between May of 2014 to November of 2015 as to whether</p> <p>11 or not Alexander Capital had any responsibility</p> <p>12 regarding ensuring the accuracy of any disclosures in</p> <p>13 registration statements in which they were listed as an</p> <p>14 underwriter?</p> <p>15 MR. WARD: Objection, vague.</p> <p>16 A. So --</p> <p>17 MR. WARD: You can answer.</p> <p>18 Q. I'm sorry?</p> <p>19 MR. WARD: Yes, you can.</p> <p>20 MR. SCHLICHTMANN: Do you want me to --</p> <p>21 let me change it again. Because I don't -- if</p> <p>22 it's -- if you're having trouble with the</p> <p>23 question then I'm going to assume the witness is</p> <p>24 as well.</p> <p>25 MR. WARD: I'm just saying it's the</p>

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<p style="text-align: right;">Page 122</p> <p>1 responsibility part --</p> <p>2 MR. SCHLICHTMANN: Yes.</p> <p>3 MR. WARD: -- that's vague.</p> <p>4 MR. SCHLICHTMANN: Okay.</p> <p>5 Q. So let me do it this way here. I'm going</p> <p>6 to bring up again, so I'm going to bring up Exhibit 135</p> <p>7 that we went over previously, the 1017 application,</p> <p>8 okay. Remember going over this previously?</p> <p>9 A. If that's the same, yeah.</p> <p>10 Q. Yes.</p> <p>11 A. Yes.</p> <p>12 Q. Yes. And this is Exhibit 135. And I'm</p> <p>13 going to go to, yeah, I'm going to go to, okay, here it</p> <p>14 is, page 13. I'm going to direct your attention to</p> <p>15 page, what is it, what is it listed as, 13 of this</p> <p>16 document, okay, do you see it's page 13?</p> <p>17 A. Yes.</p> <p>18 Q. Yeah, okay. And in the part that the</p> <p>19 applicant is filling in, I'm going to read the first</p> <p>20 sentence. "The firm and its counsel will undertake</p> <p>21 vigorous due diligence to verify the accuracy of</p> <p>22 information contained in all registration statements in</p> <p>23 which it participates." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Was it your understanding that Alexander</p>	<p style="text-align: right;">Page 123</p> <p>1 Capital, between May of 2014 through November of 2015,</p> <p>2 that it had a responsibility to vigorous -- to do</p> <p>3 vigorous due diligence to verify the accuracy of</p> <p>4 information contained in all registration statements in</p> <p>5 which it participated?</p> <p>6 A. Again, I -- responsibility to whom?</p> <p>7 Q. To anyone.</p> <p>8 A. Well, no, not to anybody.</p> <p>9 Q. Well, I mean to any, any particular</p> <p>10 individual or entity.</p> <p>11 A. I, I don't specifically recall generally</p> <p>12 from that time frame. But you're, you're saying that</p> <p>13 the firm has written this. I didn't write this so I</p> <p>14 don't know.</p> <p>15 Q. All right. Well, I'm asking your</p> <p>16 understanding as managing director during this period</p> <p>17 of time whether you understood as managing director of</p> <p>18 Alexander Capital that whether Alexander Capital had</p> <p>19 an, a obligation to use due diligence, vigorous due</p> <p>20 diligence to verify the accuracy of information</p> <p>21 contained in all registration statements in which it</p> <p>22 participated.</p> <p>23 MR. WARD: Objection, vague.</p> <p>24 MR. SCHLICHTMANN: Vague? Okay, all</p> <p>25 right, let me withdraw.</p>
<p style="text-align: right;">Page 124</p> <p>1 Q. Is this sentence in the 1017 application</p> <p>2 dated June 3, 2015, is that consistent or inconsistent</p> <p>3 with your understanding between May 2014 and November</p> <p>4 2015 regarding the responsibility of Alexander Capital</p> <p>5 regarding verifying the accuracy of information</p> <p>6 contained in registration statements in which Alexander</p> <p>7 participated?</p> <p>8 MR. WARD: Objection, vague and</p> <p>9 confusing.</p> <p>10 MR. SCHLICHTMANN: Really? Okay, all</p> <p>11 right.</p> <p>12 Q. Let me ask you this. Is there anything</p> <p>13 in that statement, looking at it now as managing</p> <p>14 director, with which you disagree?</p> <p>15 MR. WARD: Objection, vague.</p> <p>16 MR. SCHLICHTMANN: Mr. Gazdak, I'm going</p> <p>17 to withdraw the question.</p> <p>18 Q. Did you believe, between May 2014 did</p> <p>19 November 2015, did you believe that Alexander Capital</p> <p>20 had a legal obligation to use vigorous due diligence to</p> <p>21 verify the accuracy of information contained in any of</p> <p>22 the registration statements in which it participated?</p> <p>23 MR. WARD: Objection, calls for a legal</p> <p>24 conclusion.</p> <p>25 A. I was going to say, ask define legal.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Okay. Did you, you, at the time you</p> <p>2 understood that FINRA -- that Alexander Capital had</p> <p>3 certain obligations as an entity under the authority of</p> <p>4 FINRA, did you have such an understanding during May</p> <p>5 2014 to November 2015?</p> <p>6 A. No. I, I don't, I don't, I wasn't</p> <p>7 involved in those responsibilities with FINRA. I don't</p> <p>8 know.</p> <p>9 Q. Well, let me, did you understand between</p> <p>10 May 2014 and 2015 as managing director that FINRA had</p> <p>11 certain rules or requirements regarding the conduct of</p> <p>12 any member of FINRA?</p> <p>13 A. I don't know. I -- FINRA has thousands</p> <p>14 of rules. I don't --</p> <p>15 Q. Okay.</p> <p>16 A. I apologize, but I just don't know</p> <p>17 specific rules or what, what they were.</p> <p>18 Q. Do you know what a restrictive agreement</p> <p>19 is?</p> <p>20 A. No.</p> <p>21 Q. Let me show you, I'm going to go back up</p> <p>22 here. See, that page is four.</p> <p>23 All right. I've highlighted, all right,</p> <p>24 and I am going to read this paragraph on the</p> <p>25 application of June 3, 2015. "The firm intends to</p>

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<p style="text-align: right;">Page 126</p> <p>1 develop investment banking as a major business line, 2 and will devote substantial resources toward that end. 3 In that regard, the firm is requesting that it be 4 permitted by its restrictive agreement to act as 5 managing underwriter and selling group member in firm 6 commitment underwritings." Do you see that? 7 A. Yes. 8 Q. Okay. Now, it uses the term "by its 9 restrictive agreement to act as managing underwriter." 10 Do you see that -- 11 A. Yes. 12 Q. -- its restrictive agreement? 13 Does the phrase "restrictive agreement" 14 mean anything to you? 15 A. No. 16 Q. Is your understanding now, or let me say 17 do you have the, an understanding as to whether or not 18 Alexander Capital has a membership agreement with 19 FINRA? 20 A. I understand that Alexander Capital has a 21 membership agreement with FINRA. 22 Q. Okay. And what is your understanding of 23 what that membership agreement entails? 24 A. I don't know. 25 Q. Is it your understanding that if</p>	<p style="text-align: right;">Page 127</p> <p>1 Alexander Capital does not have, is not a member of 2 FINRA, do you have an understanding as to whether it 3 can conduct investment banking business? 4 A. No. I don't. I don't. 5 Q. You don't know whether it has to be a 6 member of FINRA or not? 7 A. Correct. I don't know. 8 Q. Is Alexander Capital a member of FINRA? 9 A. I -- I don't -- I don't know. But I, I 10 have to assume we are. 11 Q. Okay. And did you make that assumption 12 that Alexander Capital was a member of FINRA, FINRA 13 between May 2014 and November 2015? 14 A. I don't ever recall making the assumption 15 or not making the assumption. 16 Q. Are you a member of FINRA? 17 A. Yes. I'm a member of FINRA. 18 Q. And what does it mean to be a member of 19 FINRA, your understanding? 20 A. I am, my understanding is I, being a 21 member of FINRA, am registered with FINRA for certain 22 activities. 23 Q. Regarding investment banking? 24 A. Yes. And other things. 25 Q. And is it the same, is that the same</p>
<p style="text-align: right;">Page 128</p> <p>1 answer that your understanding for Alexander Capital as 2 well? 3 A. Again, I don't know Alexander Capital's 4 qualifications or not qualifications with FINRA. 5 Q. Did you consider that one of the 6 responsibilities of you as managing director of 7 Alexander Capital between 2014 and November 2015 as to 8 whether or not it was part of your responsibilities to 9 be knowledgeable about the membership requirements of 10 Alexander Capital in FINRA? 11 A. No. 12 Q. And is it your testimony that you were 13 not aware during that period of time of Alexander 14 Capital's membership requirements in FINRA? 15 A. That is correct. I was not aware of 16 their memberships or not membership. 17 Q. Or what the requirements of that 18 membership were? 19 A. Correct. I did not know the requirements 20 of that membership. 21 Q. And in looking at this, do you understand 22 now that Alexander Capital had a restrictive agreement 23 as a managing underwriter that prevented it from 24 undertaking firm commitment underwritings? 25 A. No.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Do you understand that now, having read 2 this application? 3 A. No. Again, I don't know what a 4 restrictive agreement is. I've never heard of it or 5 seen it. 6 Q. Even as now, even as we sit, stand here 7 and sit here now? 8 A. Yes. I haven't seen a restrictive. It 9 says the words, I'm sorry, it just says the words but I 10 don't know. 11 Q. Okay. Do you have, all right. And do 12 you have a, as we sit here today do you have an 13 understanding that the FINRA agreement that Alexander 14 Capital had during the period of time covered by this 15 1017 application, June of 2015, that Alexander 16 Capital's agreement with FINRA did not allow it to 17 participate in firm commitment underwritings? 18 A. Yeah, I apologize again, can you just 19 repeat it? I don't need clarity, I just want to make 20 -- it seemed like it was a long -- 21 Q. Okay. 22 MR. SCHLICHTMANN: So let me have that 23 one repeated if I could. 24 (Record read) 25 A. I don't recall. I never -- I don't</p>

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<p style="text-align: right;">Page 130</p> <p>1 believe I -- I don't recall seeing an agreement or</p> <p>2 reading an agreement or -- so I, I don't know. I don't</p> <p>3 recall seeing it. You're asking if I knew it back</p> <p>4 then, I --</p> <p>5 Q. You didn't know it back then; correct?</p> <p>6 A. Correct.</p> <p>7 Q. I'm asking now, having now seen this ten</p> <p>8 seven -- 1017 application dated June 3, 2015, and</p> <p>9 seeing what Alexander Capital has stated in its</p> <p>10 application at that time, is it your understanding now</p> <p>11 that at that time Alexander Capital's membership</p> <p>12 agreement did not allow it to be, to participate in</p> <p>13 firm commitment underwritings?</p> <p>14 A. I, again, I, I never saw, and I didn't --</p> <p>15 wasn't involved in the preparation of this document, so</p> <p>16 I don't know what they had or didn't have. I didn't</p> <p>17 have specific knowledge to that.</p> <p>18 Q. Okay. But the question I'm asking is,</p> <p>19 now, having seen what they said, all right, what</p> <p>20 Alexander Capital said in June, in its June 3, 2015</p> <p>21 application, that the firm is requesting that it be</p> <p>22 permitted by its restrictive agreement to act as</p> <p>23 managing underwriter and selling group member in firm</p> <p>24 commitment underwritings, having seen that in that</p> <p>25 application now, does that just, does that indicate to</p>	<p style="text-align: right;">Page 131</p> <p>1 you that as of that time Alexander Capital did not have</p> <p>2 such permission?</p> <p>3 MR. WARD: Objection, to confusing.</p> <p>4 MR. SCHLICHTMANN: Confusing, all right.</p> <p>5 Let me take it back and then I'll move on here.</p> <p>6 Q. Is it, this 1017 application dated June</p> <p>7 3, 2015, your first memory of seeing it is during this</p> <p>8 deposition, is that what you're testifying to?</p> <p>9 A. Yes. Through this process, yes.</p> <p>10 Q. Now, reading this particular sentence</p> <p>11 that we have highlighted, is it in any way surprising</p> <p>12 to you that Alexander Capital in June 3, 2015 is making</p> <p>13 this statement?</p> <p>14 A. Is it surprising to me now?</p> <p>15 Q. Yes.</p> <p>16 A. A statement made back then.</p> <p>17 Q. Yes.</p> <p>18 A. Not by me, and I don't know who made it.</p> <p>19 I don't want to say I can't -- I don't know, I mean. I</p> <p>20 apologize, I'm not trying to -- when I, by, by way of</p> <p>21 just clarity, this document is 33 pages long, and I</p> <p>22 couldn't comment whether what's surprising in it or</p> <p>23 not. You could ask me something else in there that may</p> <p>24 be surprising or, or not, I --</p> <p>25 Q. All right.</p>
<p style="text-align: right;">Page 132</p> <p>1 A. I don't know, I don't know, again, let me</p> <p>2 repeat what I said earlier. I don't know what the firm</p> <p>3 had or didn't have. So the implication, they could be</p> <p>4 reiterating something, they could be -- this language</p> <p>5 could be, I'm saying -- I'm not saying it is, I just</p> <p>6 don't know that, you know, that just because they, they</p> <p>7 reiterate it doesn't mean that they did have it, didn't</p> <p>8 have it. There's an "and", there's an uncapitalized</p> <p>9 selling group member, you know, uncapitalized managing</p> <p>10 underwriter. I just don't know.</p> <p>11 Q. Earlier I had asked you a question about</p> <p>12 what your understanding was when you first started in</p> <p>13 May of 2014. And I want to just ask you, in light of</p> <p>14 your testimony now, did you believe in, when you</p> <p>15 started with Alexander Capital in May of 2014, that</p> <p>16 Alexander Capital had whatever authority was required</p> <p>17 from FINRA to conduct firm commitment underwritings?</p> <p>18 A. I don't recall specifically believing or</p> <p>19 not believing, but it was my general understanding that</p> <p>20 yes.</p> <p>21 Q. That they had such authority?</p> <p>22 A. Or that they did not not have the</p> <p>23 authority.</p> <p>24 Q. Now I'm confused. Try to please explain</p> <p>25 to me just what you mean.</p>	<p style="text-align: right;">Page 133</p> <p>1 A. I'm just saying that I had no reason to</p> <p>2 believe that they didn't have the authority.</p> <p>3 Q. All right. And had you been told</p> <p>4 anything by anyone or seen anything while you were</p> <p>5 managing director that indicated that Alexander Capital</p> <p>6 had such authority?</p> <p>7 A. No. I had not been given or told by</p> <p>8 anyone that they had such authority.</p> <p>9 Q. Were you told that they didn't have such</p> <p>10 authority?</p> <p>11 A. No.</p> <p>12 Q. So you assumed that they did?</p> <p>13 A. Again, I didn't -- I didn't assume or</p> <p>14 not. I just, I apologize, it just didn't come up.</p> <p>15 Q. All right. But you -- so we can -- all</p> <p>16 right. But it was your belief that they had, for</p> <p>17 whatever reason?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And then I believe you said</p> <p>20 that at some point you learned that they did not have</p> <p>21 such authority; correct?</p> <p>22 A. That's what -- yes, that's correct.</p> <p>23 Q. Okay. And having now seen this June 3,</p> <p>24 2015 application in which in particular we have</p> <p>25 highlighted this statement regarding Alexander</p>

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<p style="text-align: right;">Page 134</p> <p>1 Capital's request to be given permission regarding firm 2 commitment underwritings, does that in any way help you 3 figure out as to whether it was this particular event 4 in which you first became aware that they didn't have 5 the authority?</p> <p>6 A. And I don't recall if this was -- I don't 7 recall if this was, because I hadn't seen this before, 8 I don't -- so I can't say if this was the event back 9 then. I don't recall exactly what the event was, 10 excuse me.</p> <p>11 Q. And --</p> <p>12 MR. SCHLICHTMANN: Oh, I'm sorry. Let's 13 just go back to the one here.</p> <p>14 Q. And showing you again 143 A. And this is 15 again a May 15, 2015 letter, and just again directing 16 your attention to "other" in that letter of May 15th. 17 Now, this is, you know, a month previous to what we had 18 just discussed, the 1017 application; correct? Just 19 from a time we're now dealing a little earlier in time. 20 And you see on the sixth, and we went over this before, 21 but it says "the department suggests that the firm 22 contact their district office to discuss their 23 participation", referring to Alexander Capital, "in 24 this offering", referring to the Alterix offering, "and 25 obtain approval to underwrite this offerings on a firm</p>	<p style="text-align: right;">Page 135</p> <p>1 commitment basis." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, having read that and seeing 4 that in this letter from FINRA they are saying that 5 Alexander Capital should obtain approval to underwrite 6 this offering on a firm commitment basis, or that they 7 have to obtain approval, does that help you in any way 8 refresh your recollection as to when you first learned 9 that in fact Alexander Capital did not have such 10 authority to do firm commitment offerings?</p> <p>11 A. No, it doesn't help to narrow down the 12 time frame.</p> <p>13 Q. And is there anything, was there -- do 14 you have any -- do you have a -- is it -- do you have 15 any reason to believe, after having gone through these 16 document that we've done today, as to whether or not 17 this under -- this understanding that they didn't have 18 authority came during the Alterix offering that 19 Alexander Capital was participating in, or was it some 20 other company's offering, or you just can't remember?</p> <p>21 A. As previously I think stated, I don't 22 recall.</p> <p>23 Q. That you don't know if it was, that this, 24 this, that you learned that they didn't have the 25 authority, you don't know whether it was during the</p>
<p style="text-align: right;">Page 136</p> <p>1 course of the Alterix offering or some other company 2 that Alexander Capital was representing during this 3 time?</p> <p>4 A. I don't recall the specific timing, nor 5 the specific company that, as you, as you said, whether 6 it was this company or that company.</p> <p>7 Q. And seeing these documents doesn't help 8 you?</p> <p>9 A. It doesn't help me, no.</p> <p>10 Q. Okay. Now, do you have -- what was your 11 understanding -- did you have an understanding as to 12 whether or not during the time that you've been 13 managing director of Alexander Capital, as to whether 14 or not Alexander Capital as an underwriter had, had a 15 duty, okay, as part of its membership requirements in 16 FINRA, to ensure the accuracy of any disclosures in 17 registration statements in which it was the 18 underwriter?</p> <p>19 A. You're asking, just to clarify, a duty 20 and that duty to FINRA?</p> <p>21 Q. A duty arising out of its FINRA 22 membership.</p> <p>23 A. So, okay. I don't know. I don't know 24 what the duties were. I hadn't seen our membership 25 agreement with FINRA. I still haven't seen it, so.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. So --</p> <p>2 A. I can't speak to our specific duties or, 3 I just can't.</p> <p>4 Q. Even now?</p> <p>5 A. I, I still haven't seen our membership 6 agreement with FINRA, so I --</p> <p>7 Q. All right. Do you -- well, is it fair to 8 say then as of between May of 2014 and November 2015 9 that you did not believe during that period that 10 Alexander Capital had any particular duty regarding the 11 disclosures made in registration statements in which 12 Alexander Capital was participating?</p> <p>13 A. Disclosure statements --</p> <p>14 Q. In a registration statement.</p> <p>15 A. Made by whom?</p> <p>16 Q. Made by the, in the registration 17 statement which is being filed on behalf of the issuing 18 company and being underwritten by Alexander Capital.</p> <p>19 A. I -- I can't speak to the disclosures 20 made by the company.</p> <p>21 Q. Right. But I'm asking particularly 22 whether that, that -- is it fair to say that you did 23 not have a, an understanding from May 2014 to November 24 2015 that Alexander Capital as an underwriter had a 25 duty as a requirement of its membership in FINRA to</p>

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<p style="text-align: right;">Page 138</p> <p>1 ensure the accuracy of disclosures made in registration</p> <p>2 statements in which Alexander Capital was the</p> <p>3 underwriter?</p> <p>4 A. I don't -- I don't recall or know the</p> <p>5 specific FINRA, as you'll say, duties charged to a</p> <p>6 broker-dealer in regards to your question.</p> <p>7 Q. During that period and up to now?</p> <p>8 A. Up to now.</p> <p>9 Q. Did it ever -- I think I asked this</p> <p>10 before, and forgive me if I did, but did it ever come</p> <p>11 to your attention at any time, including up to now, as</p> <p>12 to whether or not certain -- that CorpFin brought to</p> <p>13 Alexander Capital's attention that there were certain</p> <p>14 disclosures in the Alterix registration statements that</p> <p>15 had been made previously but then been taken out and</p> <p>16 the CorpFin reviewers directed that they be put back</p> <p>17 in, did it ever come to your attention between that</p> <p>18 period and now that that took place?</p> <p>19 A. Just to be clear, you're talking about</p> <p>20 something other than what you just showed me on this</p> <p>21 document on the first page or some other document?</p> <p>22 Q. You're talking about the CorpFin, the</p> <p>23 November --</p> <p>24 A. Yeah.</p> <p>25 Q. -- the November 10th, 2015 CorpFin</p>	<p style="text-align: right;">Page 139</p> <p>1 response?</p> <p>2 A. Yes. I -- if that's what it was. That's</p> <p>3 my --</p> <p>4 Q. Yes.</p> <p>5 A. You're not referring to that?</p> <p>6 Q. I am. I'm using that as well, yes. Or</p> <p>7 anything else.</p> <p>8 A. Then no, I don't recall any of that. But</p> <p>9 I saw it, you know, an hour ago or whatever, however</p> <p>10 long ago it was.</p> <p>11 Q. Okay. And therefore it's -- and but you</p> <p>12 have no other memory other -- of that actually, of such</p> <p>13 a thing coming to your attention except what you saw</p> <p>14 today in today's deposition?</p> <p>15 A. Correct. I do not recall, that's</p> <p>16 correct.</p> <p>17 Q. Okay. I'm going to show you what's been</p> <p>18 marked Plaintiff's Exhibit 129, and it's, the letter</p> <p>19 itself is just, just five pages almost, they're really</p> <p>20 basically four. So I'm going to give you control of</p> <p>21 the document, if you could look through the first five</p> <p>22 pages and tell me whether you're, are you familiar with</p> <p>23 it or remember reviewing it prior to today.</p> <p>24 (Witness perusing documents)</p> <p>25 A. Is that the end?</p>
<p style="text-align: right;">Page 140</p> <p>1 Q. Yes, of the letter, yes. It has</p> <p>2 attachments, but I'll -- I'm just asking about the</p> <p>3 letter.</p> <p>4 A. Yup, yes, I reviewed it. But no, I've</p> <p>5 never seen this. I, I don't, I don't recall seeing</p> <p>6 this at all.</p> <p>7 Q. Okay. Just in this letter it mentions in</p> <p>8 paragraph number one on the first page, it said,</p> <p>9 "FINRA's saying to provide documentation of NESAs</p> <p>10 Management LLC's assumption of the role of general</p> <p>11 partner of the firm draft or executed." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And then they, they give a, they</p> <p>15 say go see exhibit A. But first of all, do you know,</p> <p>16 is NESAs Management, LLC an entity that you're familiar</p> <p>17 with?</p> <p>18 A. Not specifically, no.</p> <p>19 Q. Does NESAs Management LLC mean anything to</p> <p>20 you as you sit here today?</p> <p>21 A. Not, not that I can specifically</p> <p>22 recollect. I mean, I've heard the names, but I'm not</p> <p>23 really sure of any specifics about it.</p> <p>24 Q. All right. In, from May of 2014 through</p> <p>25 November of 2015, what was your understanding as to the</p>	<p style="text-align: right;">Page 141</p> <p>1 corporate, what kind of a corporate entity Alexander</p> <p>2 Capital was?</p> <p>3 A. Other than it being a limited partnership</p> <p>4 because it's in our name?</p> <p>5 Q. Yes.</p> <p>6 A. Nothing.</p> <p>7 Q. Was it your understanding --</p> <p>8 A. I don't know.</p> <p>9 Q. Was it your understanding during that</p> <p>10 period that it was a limited partnership?</p> <p>11 A. Yes. That was my understanding.</p> <p>12 Q. Okay.</p> <p>13 A. I don't know if it was.</p> <p>14 Q. All right. And do you have a, based on</p> <p>15 your education, your training, your experience, your</p> <p>16 knowledge in the business, are you familiar with the</p> <p>17 term "general partner"?</p> <p>18 A. Yes.</p> <p>19 Q. What's your understanding of a general</p> <p>20 partner?</p> <p>21 A. My understanding --</p> <p>22 MR. WARD: Objection, legal conclusion.</p> <p>23 MR. SCHLICHTMANN: I'm sorry, Bryan, you</p> <p>24 don't like that?</p> <p>25 MR. WARD: I just said, yeah, just</p>

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<p style="text-align: right;">Page 142</p> <p>1 objection for a legal conclusion.</p> <p>2 MR. SCHLICHTMANN: Okay, okay. Well --</p> <p>3 MR. WARD: But he can answer it.</p> <p>4 MR. SCHLICHTMANN: All right, so let me</p> <p>5 just make it clear. Thank you for the objection.</p> <p>6 Q. Did you have an understanding from May</p> <p>7 2014 to November 2015 as to what a general partner's</p> <p>8 role was in a limited partnership, did you have any</p> <p>9 understanding during that period?</p> <p>10 A. Generally in corporate structures?</p> <p>11 Q. Yes.</p> <p>12 A. Generally, yes, but not specifically.</p> <p>13 Q. And could you describe it?</p> <p>14 A. It's my understanding, and I've never</p> <p>15 been a partner of a limited partnership, but my</p> <p>16 understanding is that the general partner or a general</p> <p>17 partner would be, for lack of a better term, not a</p> <p>18 legal term, manage the partnership.</p> <p>19 Q. All right. And do limited partners?</p> <p>20 A. Actually I don't know that. I don't</p> <p>21 know. Do they, I don't know.</p> <p>22 Q. Okay. But your understanding was that a</p> <p>23 general partner had the responsibility of managing the</p> <p>24 partnership, a general partnership?</p> <p>25 A. Yes. In general, in general corporate</p>	<p style="text-align: right;">Page 143</p> <p>1 structures, not specific to Alexander. I didn't know</p> <p>2 anything about that.</p> <p>3 Q. Okay. All right. What was your</p> <p>4 understanding between May of 2014 and November 2015 as</p> <p>5 to who was the general, who was the general partner of</p> <p>6 Alexander Capital LP during that period?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you have an understanding now?</p> <p>9 A. No. I don't know now either.</p> <p>10 Q. Do you know whether NESAs Management LLC</p> <p>11 ever became the general partner at any time of</p> <p>12 Alexander Capital LP?</p> <p>13 A. No, I do not recall or know.</p> <p>14 Q. Okay. This refers to Exhibit A. I'm</p> <p>15 just going to go to Exhibit A.</p> <p>16 MR. SCHLICHTMANN: I'm sorry, sorry about</p> <p>17 that, okay, I'm getting familiar with the</p> <p>18 documents now.</p> <p>19 Q. All right, here is Exhibit A. And it's</p> <p>20 an assignment and assumption agreement, it's undated</p> <p>21 and it's not executed, but it's between Alexander</p> <p>22 Capital Holdings Inc., a Delaware corporation. All</p> <p>23 right, does Alexander Capital Holdings Inc. mean</p> <p>24 anything to you, is that a --</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 144</p> <p>1 Q. -- corporation you're familiar with at</p> <p>2 all?</p> <p>3 A. No, I'm sorry, no.</p> <p>4 Q. And NESAs Management LLC we've already</p> <p>5 established you're not familiar with them either?</p> <p>6 A. I've heard the name but I'm not familiar</p> <p>7 with them, no.</p> <p>8 Q. Okay. In this undated, unexecuted</p> <p>9 document that is part of the October 27, 2015 response</p> <p>10 to FINRA, it says, "Whereas, Alexander Capital Holdings</p> <p>11 Inc. holds a hundred percent of the general partnership</p> <p>12 interest of Alexander Capital LP and serves as the</p> <p>13 general partner", do you see that?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Okay. Is that, did you know that at the</p> <p>16 time --</p> <p>17 A. No.</p> <p>18 Q. -- whether that was true or not?</p> <p>19 A. No.</p> <p>20 Q. Do you know now?</p> <p>21 A. No.</p> <p>22 Q. Okay. So to this day you don't know who</p> <p>23 or whether Alexander Capital has a general partner?</p> <p>24 A. No, no.</p> <p>25 Q. No, you don't know?</p>	<p style="text-align: right;">Page 145</p> <p>1 A. No, I don't know.</p> <p>2 MR. SCHLICHTMANN: Okay, all right, we'll</p> <p>3 take that off.</p> <p>4 Q. I'm going to show you, this is a</p> <p>5 document, Plaintiff's Exhibit 120. I'm sorry, you know</p> <p>6 what, before I just do that, let me just quickly go</p> <p>7 back to the and finish with it. I apologize, I'm going</p> <p>8 to back to the Exhibit 129, and just direct your</p> <p>9 attention to number six on page two. And it says, "As</p> <p>10 discussed, the firm was issued a Wells Notification on</p> <p>11 September 1st, 2015. Please provide a detailed</p> <p>12 statement as to why the matter as noted should not</p> <p>13 impact the application, this 1017 application." Do you</p> <p>14 see that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what a Wells Notification is?</p> <p>17 A. Not specifically.</p> <p>18 Q. Generally?</p> <p>19 A. Not in a legal sense, no.</p> <p>20 Q. In any kind of general sense?</p> <p>21 A. I believe it's a notification -- yes.</p> <p>22 Q. What is it, what's your understanding?</p> <p>23 A. I don't -- it's a notification, it's some</p> <p>24 level, I believe the SEC to, to somebody.</p> <p>25 Q. All right. And were you aware during</p>

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<p style="text-align: right;">Page 146</p> <p>1 between as 2015 as to whether or not FINRA or the SEC</p> <p>2 had put Alexander Capital on notice that it had a</p> <p>3 regulatory issue that required Alexander Capital to</p> <p>4 reply regarding the allegations that FINRA, the SEC</p> <p>5 were considering?</p> <p>6 A. No.</p> <p>7 Q. Is it new -- is it news to you that on</p> <p>8 September 1st, 2015 the firm was issued a so-called</p> <p>9 Wells Notification and required to give a detailed</p> <p>10 statement as to why Alexander Capital should not be the</p> <p>11 subject of some sort of an action by the regulators?</p> <p>12 A. Again, I -- don't take it wrong, news to</p> <p>13 me meaning?</p> <p>14 Q. Now, I mean, you didn't know it before</p> <p>15 and now you're just learning it now.</p> <p>16 A. Yes, I'm just learning it now.</p> <p>17 Q. Is this true?</p> <p>18 A. Yes.</p> <p>19 Q. This letter of October 27, 2015.</p> <p>20 A. So yes, this is the first I've learned of</p> <p>21 it.</p> <p>22 Q. So you -- so it's fair to say that you</p> <p>23 are not aware during 2015 that Al -- as managing</p> <p>24 director that Alexander Capital had been put on notice</p> <p>25 by FINRA that it had a or could be the subject of a</p>	<p style="text-align: right;">Page 147</p> <p>1 investigation or enforcement action of some kind?</p> <p>2 MR. WARD: Objection, misstates the</p> <p>3 testimony.</p> <p>4 MR. SCHLICHTMANN: All right, so, all</p> <p>5 right, so I'm specifically asking.</p> <p>6 Q. Did you in 2015, did it ever come to your</p> <p>7 attention that Alexander Capital in 2015 was put on</p> <p>8 notice by FINRA or the SEC, one or both, regarding the</p> <p>9 fact that it may be the subject of either an</p> <p>10 investigatory -- an investigation or an enforcement</p> <p>11 action of any kind?</p> <p>12 A. Not to my recollection, no.</p> <p>13 Q. Okay. And if in fact it was, if that</p> <p>14 was, if that did happen, you're learning about that for</p> <p>15 the first time right now; is that correct?</p> <p>16 A. To my knowledge, yes, that's correct.</p> <p>17 Q. All right. Okay, all right. Now, I'm</p> <p>18 going to now show, all right, now I'm going to show you</p> <p>19 Plaintiff's Exhibit 120, all right. And could you,</p> <p>20 it's short, but could you read it over, and you can</p> <p>21 have control. You have control, he has control, yes,</p> <p>22 thank you.</p> <p>23 (Witness perusing documents)</p> <p>24 A. Okay.</p> <p>25 Q. All right. Have you ever seen this email</p>
<p style="text-align: right;">Page 148</p> <p>1 before --</p> <p>2 A. No.</p> <p>3 Q. -- Plaintiff's Exhibit 120?</p> <p>4 Now, having read it, does this refresh</p> <p>5 your recollection about any of the things discussed in</p> <p>6 that email, is your memory refreshed in any way about</p> <p>7 any of the events discussed in that email of November</p> <p>8 2nd?</p> <p>9 A. No.</p> <p>10 Q. Okay. Now, this is an email from</p> <p>11 Mr. Restrepo to an official at FINRA. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. It's dated November 2nd, 2015.</p> <p>14 The subject is "Alexander Capital LP, CMA/1017." Do</p> <p>15 you see that?</p> <p>16 A. Yes.</p> <p>17 Q. I'm going to represent to you that this</p> <p>18 is part of the 1017 application process we previously</p> <p>19 discussed.</p> <p>20 A. Okay.</p> <p>21 Q. All right. And in this letter it states</p> <p>22 in the first sentence, "As you are aware, I officially</p> <p>23 joined Alexander Capital as the chief compliance</p> <p>24 office", I'm assuming they meant officer, "/managing</p> <p>25 director last week. FINRA approved the firm's</p>	<p style="text-align: right;">Page 149</p> <p>1 registration on Friday, making me official."</p> <p>2 Now, are will more than one managing</p> <p>3 directors at Alexander Capital?</p> <p>4 A. I -- you mean right now?</p> <p>5 Q. Well, during 2014 to 2015 were there</p> <p>6 different, were there managing directors of different</p> <p>7 divisions of Alexander Capital or sections of Alexander</p> <p>8 Capital?</p> <p>9 A. I, I don't know everyone's specific</p> <p>10 title, sorry.</p> <p>11 Q. All right. Did, when in describing in</p> <p>12 Mr., this is by Mr. Restrepo, first of all, are you</p> <p>13 familiar with Mr. Restrepo, is that name familiar to</p> <p>14 you?</p> <p>15 A. Yes.</p> <p>16 Q. Were you aware of the fact that in</p> <p>17 October of, in this time period, October, early</p> <p>18 November 2015 Mr. Restrepo was brought in to Alexander</p> <p>19 Capital as the chief compliance officer/managing</p> <p>20 director?</p> <p>21 A. I don't recall the specific dates and I</p> <p>22 certainly don't recall his specific titles, but --</p> <p>23 Q. Do you remember Mr. Restrepo's, what</p> <p>24 position he took over when he did come in to Alexander</p> <p>25 Capital?</p>

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<p style="text-align: right;">Page 150</p> <p>1 A. I, I don't recall. But again, I'm not</p> <p>2 saying that what here -- what is here is false, I have</p> <p>3 no reason to say it's false or know whether it's true.</p> <p>4 Q. Do you know what a chief compliance</p> <p>5 office, did you have an understanding of the duties of</p> <p>6 a chief compliance office at Alexander Capital?</p> <p>7 A. Not specifically, no.</p> <p>8 Q. Generally?</p> <p>9 A. Potentially, but I -- you know, again, I</p> <p>10 don't know the specific roles or responsibilities of a</p> <p>11 chief compliance officer.</p> <p>12 Q. Do you know them now as you sit here</p> <p>13 today?</p> <p>14 A. No.</p> <p>15 Q. You were aware that Mr. -- did you have</p> <p>16 any understanding of what Mr. Restrepo's role was at</p> <p>17 Alexander Capital when he was employed by Alexander</p> <p>18 Capital in 2015?</p> <p>19 A. Again, I don't recall the specific roles</p> <p>20 and responsibilities. I do recall him being in the</p> <p>21 compliance department.</p> <p>22 Q. All right. And Alexander Capital has a</p> <p>23 compliance department?</p> <p>24 A. Yes. I don't know specifically, but yes.</p> <p>25 Q. And what was your, what's your</p>	<p style="text-align: right;">Page 151</p> <p>1 understanding, well, what was your understanding</p> <p>2 between 2014 and November 2015 as to what the</p> <p>3 compliance office at Alexander Capital was responsible</p> <p>4 for?</p> <p>5 A. I, I don't recall, nor do I know.</p> <p>6 Q. Even now?</p> <p>7 A. Even now.</p> <p>8 Q. All right. Do you see in the third</p> <p>9 paragraph, it says, second sentence, "In particular,</p> <p>10 the firm is anxiously awaiting approval to be able to</p> <p>11 conduct an underwriting business on a firm commitment</p> <p>12 basis." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And then it says in parentheses, "the</p> <p>15 firm is approved and has been conducting such a</p> <p>16 business on a best efforts basis for a while now", end</p> <p>17 parentheses.</p> <p>18 A. Yes.</p> <p>19 Q. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. "And to increase its head count." Do you</p> <p>22 see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Were you aware of the fact that</p> <p>25 one of the things that Mr. Restrepo was doing in this</p>
<p style="text-align: right;">Page 152</p> <p>1 time period was, was trying to get Alexander Capital</p> <p>2 approved to do underwriting business on a firm</p> <p>3 commitment basis?</p> <p>4 A. No, I don't recall being aware of that,</p> <p>5 that he was trying to do that.</p> <p>6 Q. Is the first time you became aware of</p> <p>7 that as we sit here today?</p> <p>8 A. Again, I don't recall, but -- I don't</p> <p>9 recall being unaware or aware. I don't recall knowing</p> <p>10 specifics of Mr. Restrepo's -- what he was doing.</p> <p>11 Q. And having now viewed this email, does</p> <p>12 that help refresh your recollection in any way?</p> <p>13 A. No.</p> <p>14 Q. All right. Do you have any reason --</p> <p>15 well, that's -- all right.</p> <p>16 Are you -- let's go to this one. I'm</p> <p>17 going to show you what's been marked as Plaintiff's</p> <p>18 Exhibit 122. And this is a, an email dated January 14,</p> <p>19 2016 between Mr. Carmel, the law firm representing</p> <p>20 Alexander Capital regarding its 1017 application, and</p> <p>21 Mr. Francois, the official at FINRA, and Mr. Restrepo.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And this email indicates that the</p> <p>25 1017 application is still pending with FINRA as of</p>	<p style="text-align: right;">Page 153</p> <p>1 January 2016. Do you see that?</p> <p>2 A. No.</p> <p>3 Q. Well, it says subject --</p> <p>4 A. I'm sorry, I'm just -- it says Alexander</p> <p>5 Application, so --</p> <p>6 Q. I'm going to represent to you that</p> <p>7 they're referring to the 10/7 application.</p> <p>8 A. Okay.</p> <p>9 Q. Records of Alexander Capital also</p> <p>10 indicate that the application was withdrawn in February</p> <p>11 of 2016. Are you aware that in fact the 1017</p> <p>12 application that we have been discussing was withdrawn</p> <p>13 by Alexander Capital in February 2016?</p> <p>14 A. No, I don't recall that, no.</p> <p>15 Q. Is that news to you today?</p> <p>16 A. Again, define news to me.</p> <p>17 Q. You said --</p> <p>18 A. The first I recall being made aware of</p> <p>19 it.</p> <p>20 Q. Is as you sit here today?</p> <p>21 A. Yes. As I can recall, yes.</p> <p>22 Q. Okay. Are you aware at any time between</p> <p>23 May 2014 and November 2015, were you aware at any time</p> <p>24 during that period whether or not Alterix or anyone</p> <p>25 associated with Alterix, also named Inpellis, ever --</p>

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<p style="text-align: right;">Page 154</p> <p>1 it was ever brought to your attention that anyone</p> <p>2 associated with Alterix or Inpellis was concerned as to</p> <p>3 whether or not Alexander Capital could undertake a firm</p> <p>4 commitment offering? Do you want me to repeat the</p> <p>5 question?</p> <p>6 A. Yes, or shorten it, yes.</p> <p>7 Q. Okay. So let me state it again. Did it</p> <p>8 ever come to your attention between May of 2014 and</p> <p>9 November of 2015 that anyone associated with Alterix,</p> <p>10 also known as Inpellis, ever brought to Alexander</p> <p>11 Capital's attention the concern that Alexander Capital</p> <p>12 was, was not able to undertake a firm commitment</p> <p>13 offerings.</p> <p>14 A. I do not recall that concern ever being</p> <p>15 brought.</p> <p>16 Q. If I told that you such a concern was</p> <p>17 brought, if I tell you that that was true, would that</p> <p>18 be news to you as you sit here today?</p> <p>19 A. By definition I don't -- I didn't recall</p> <p>20 it happening, so.</p> <p>21 Q. So would be news to you now if that's</p> <p>22 true?</p> <p>23 A. I don't know. I mean, if -- yes, I</p> <p>24 guess. I mean, I never -- I don't recall being made</p> <p>25 aware of any concern.</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. Okay. Did you have an understanding, was</p> <p>2 it your understanding while you were managing director</p> <p>3 from May of 2014 to November 2015 that if anyone</p> <p>4 associated with Alterix or Inpellis had a concern about</p> <p>5 Alexander Capital's ability to do a firm commitment</p> <p>6 offering, that that is something that should have been</p> <p>7 brought to your attention?</p> <p>8 A. I -- I don't -- I don't know. I</p> <p>9 can't -- I wasn't involved in those conversations and I</p> <p>10 don't know. So I don't know.</p> <p>11 Q. Is it, well, is it something that should</p> <p>12 have been brought based on the responsibilities that</p> <p>13 you had at Alexander Capital, or it didn't matter</p> <p>14 whether it was brought to your attention or not?</p> <p>15 A. I -- I'm not saying it mattered or didn't</p> <p>16 matter. I'm saying I don't know whose responsibility,</p> <p>17 not defining responsibilities, if someone, if you're</p> <p>18 saying that happened, what they should or should not</p> <p>19 have done, I don't know.</p> <p>20 Q. Well, let me ask it this way. From May</p> <p>21 2014 to November of 2015 did you have an understanding</p> <p>22 that if someone at Alexander Capital became aware</p> <p>23 during that period that someone associated with Alterix</p> <p>24 a/k also known as Inpellis, was concerned about</p> <p>25 Alexander Capital's ability to do a firm commitment</p>
<p style="text-align: right;">Page 156</p> <p>1 offering, that such person, such Alexander Capital</p> <p>2 person should have brought that information to your</p> <p>3 attention during that period of time, or you don't have</p> <p>4 an understanding or --</p> <p>5 A. Again, I'll --</p> <p>6 Q. -- don't believe they had to do that?</p> <p>7 A. I'm not saying they had a reason or my</p> <p>8 expectation. So I don't know what their</p> <p>9 responsibilities were, whoever they is, that you're</p> <p>10 referring to, I don't know.</p> <p>11 Q. All right. From May of 2014 to November</p> <p>12 of 2015, did you say or do anything, orally or in</p> <p>13 writing, that would lead anyone to believe at, who was</p> <p>14 associated with Alexander Capital, that if anyone</p> <p>15 associated with any company in which Alexander Capital</p> <p>16 was the underwriter, where they expressed a concern</p> <p>17 that Alexander Capital did not have the ability to</p> <p>18 undertake the offering that was the -- to undertake the</p> <p>19 offering for that company, that that is information</p> <p>20 that should have been brought to your attention, or you</p> <p>21 did not, you have no memory of taking any action orally</p> <p>22 or in writing that would lead any Alexander Capital</p> <p>23 employee to believe they should do such a thing?</p> <p>24 A. No. I --</p> <p>25 MR. WARD: Objection, confusing grounds.</p>	<p style="text-align: right;">Page 157</p> <p>1 MR. SCHLICHTMANN: All right, take it</p> <p>2 away, all right, take it back.</p> <p>3 Q. Did you, between May 2014 and November</p> <p>4 2015 did you say anything orally, put anything in</p> <p>5 writing, or by your conduct indicate in any way to any</p> <p>6 employee of Alexander Capital that during that period</p> <p>7 of time if anybody associated with Alexander Capital</p> <p>8 became aware that Alterix/Inpellis was concerned that</p> <p>9 Alexander Capital did not have the ability to do the</p> <p>10 firm commitment offering, that it was that person</p> <p>11 should have brought, that Alexander Capital person</p> <p>12 should have brought that to your attention?</p> <p>13 A. I -- I don't recall making such</p> <p>14 statement.</p> <p>15 Q. Or any, engaging in any behavior that</p> <p>16 would lead someone to believe that?</p> <p>17 A. Agreed. I just don't recall. I'm not</p> <p>18 saying I did or didn't. I just don't recall.</p> <p>19 Q. Okay. Are you aware of the fact that,</p> <p>20 let me show you, all right. I'm going to show you</p> <p>21 Plaintiff's Exhibit 39. It's a, 39, which is an email</p> <p>22 from Mr. Barrette to the Inpellis board of directors.</p> <p>23 Now, were you of a, that there was a person, Thomas</p> <p>24 Barrette, who was a lawyer working as counsel to</p> <p>25 Inpellis during this period?</p>

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<p style="text-align: right;">Page 158</p> <p>1 A. Yes.</p> <p>2 Q. Did you have any, do you have any memory</p> <p>3 of interacting with Mr. Barrette for any reason about</p> <p>4 anything during this period?</p> <p>5 A. Yes. In the course of the relationship</p> <p>6 or the, you know, the time together, yes. Not</p> <p>7 specifics, but yeah in general, yes.</p> <p>8 Q. Okay. Are you aware of the fact that on</p> <p>9 November, that in this email, right, indicates that</p> <p>10 Mr. Barrette notified the board of a board meeting on</p> <p>11 the evening of November 9th regarding the filing of the</p> <p>12 S-1 the next day, the public filing of the S-1 the next</p> <p>13 day on November 10th. Are you aware of the fact, were</p> <p>14 you aware of the fact at the time that Mr. -- that the</p> <p>15 Inpellis board of directors were having a meeting or</p> <p>16 had a meeting on November 9th, 2015 to consider the</p> <p>17 public filing of the S-1 the next day?</p> <p>18 A. No, I don't recall being aware of that.</p> <p>19 Q. And were you in any way familiar with or</p> <p>20 have any interaction at all with any of the board</p> <p>21 members of the Inpellis board of directors at any time</p> <p>22 during this period?</p> <p>23 A. I don't recall specifically. I don't</p> <p>24 recall.</p> <p>25 Q. Do you have, do you have any memory of</p>	<p style="text-align: right;">Page 159</p> <p>1 interacting with Jack Clark, the chairman of the board?</p> <p>2 A. No, not, not specifically, not directly,</p> <p>3 no.</p> <p>4 Q. Okay. Generally?</p> <p>5 A. I just don't recall. I just don't</p> <p>6 recall.</p> <p>7 Q. Do you have any memory of interacting</p> <p>8 with Mr. Mooney during this period of time?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And are you aware of the fact that</p> <p>11 Mr. Mooney became CEO of Inpellis on June 11th of 2015,</p> <p>12 are you aware of that?</p> <p>13 A. I'm not -- I don't recall the specific</p> <p>14 date but generally, yes.</p> <p>15 Q. All right. Are you, were you aware in</p> <p>16 November 2015 that, that the board of board of</p> <p>17 directors of Inpellis approved the filing of the</p> <p>18 Inpellis S-1 the next day, are you aware of that?</p> <p>19 A. Not that I can relect, no. Re --</p> <p>20 recollect, recollect.</p> <p>21 Q. I'm going to show you, that's Plaintiff's</p> <p>22 Exhibit 34. Now, it's 151 pages, and I'm just showing</p> <p>23 you really the front cover here. It's a Form S-1.</p> <p>24 It's, do you see at the top it's dated November 9th,</p> <p>25 2015?</p>
<p style="text-align: right;">Page 160</p> <p>1 A. Yes.</p> <p>2 Q. And on the second page it says, under the</p> <p>3 name "Inpellis", "this is a firm commitment initial</p> <p>4 public offering." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you remember seeing at any time</p> <p>7 any of the draft registration statements that were</p> <p>8 filed between April and October 28th, 2015 that were</p> <p>9 filed regarding the Inpellis offering, do you remember</p> <p>10 ever seeing them?</p> <p>11 A. No, I don't. I don't recall seeing them</p> <p>12 or not seeing them, but --</p> <p>13 Q. All right. When I, looking at this one</p> <p>14 dated November 9th, 2015, which says on the second page</p> <p>15 it's a firm commitment offering, does this refresh your</p> <p>16 recollection at all or is this consistent with any</p> <p>17 memory you may have of looking at an Inpellis</p> <p>18 registration statement?</p> <p>19 A. No, I don't recall. I mean, I see it</p> <p>20 here, but it doesn't help me recollect.</p> <p>21 Q. All right. Okay. And is it, did you in,</p> <p>22 from May 2014 to November 2015 did you have an</p> <p>23 understanding as the managing director as to whether or</p> <p>24 not the CEO of a company and its board of directors had</p> <p>25 any obligations to sign a registration statement that's</p>	<p style="text-align: right;">Page 161</p> <p>1 going to be filed publicly?</p> <p>2 A. I don't know the specific legal bylaws by</p> <p>3 each company, no.</p> <p>4 Q. No, I mean, as a matter of securities</p> <p>5 laws, did you have an understanding during this period,</p> <p>6 May 2014 to November 2015, that the CEO and the board</p> <p>7 of directors of a company wishing to undertake an</p> <p>8 initial public offering had an obligation to sign the</p> <p>9 registration statement when it's being filed publicly?</p> <p>10 A. No. I don't, I don't know the</p> <p>11 regulations.</p> <p>12 Q. As we sit here today are you aware of</p> <p>13 that requirement?</p> <p>14 A. No. No.</p> <p>15 Q. Well, I'm going to show you --</p> <p>16 MR. SCHLICHTMANN: Let's go back to,</p> <p>17 okay, and that is page 146.</p> <p>18 Q. Okay, I'm showing you page 146 of</p> <p>19 Plaintiff's Exhibit, Plaintiff's Exhibit 34, the</p> <p>20 November 9th draft that we just went over. I'm now</p> <p>21 showing you page one, actually it's, it's Roman numeral</p> <p>22 II-V, but on this document, which is, it's page 146,</p> <p>23 the physical page, all right? You can see it on the</p> <p>24 screen?</p> <p>25 A. No. I still, I still show the -- oh,</p>

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<p style="text-align: right;">Page 162</p> <p>1 yeah, there's some change there.</p> <p>2 Q. Okay. So you can see it now?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you see at the top it has</p> <p>5 November 9th, 2015 there, do you see?</p> <p>6 A. Yes.</p> <p>7 Q. And it has the Bates stamp of 1041 EST.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And this is the signature page</p> <p>11 from that multipage document?</p> <p>12 A. Okay.</p> <p>13 Q. Which is the November 9th draft that we</p> <p>14 just showed you, which is Exhibit 34.</p> <p>15 A. Okay.</p> <p>16 Q. And you see it says signatures, right, on</p> <p>17 this page?</p> <p>18 A. Yes.</p> <p>19 Q. It says, "Pursuant to the requirements of</p> <p>20 the Securities Act of 1933 as amended, the registrant</p> <p>21 has duly caused this registration statement on Form S-1</p> <p>22 to be signed on its behalf by the undersigned there,</p> <p>23 and two, duly authorized in the Town of Beverly,</p> <p>24 Commonwealth Mass, on the blank date", and it says</p> <p>25 "Inpellis Inc. by." Do you see that?</p>	<p style="text-align: right;">Page 163</p> <p>1 A. Yes.</p> <p>2 Q. Then it talks about the power of</p> <p>3 attorney, right? And it says, second paragraph,</p> <p>4 "Pursuant to the requirements of the Securities Act of</p> <p>5 1933 as amended, this registration statement on Form</p> <p>6 S-1 has been signed by the following persons in the</p> <p>7 capacities on the dates indicated below." Do you see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see it says, it's got a space</p> <p>11 for Patrick Mooney with a date of November 10th, and it</p> <p>12 says president, CEO and director, principal executive</p> <p>13 officer. Do you see that?</p> <p>14 A. Yup.</p> <p>15 Q. Then it has Frank Manguso, chief</p> <p>16 financial officer.</p> <p>17 A. Yup.</p> <p>18 Q. Then it has David Staskin, chief strategy</p> <p>19 officer, secretary and director?</p> <p>20 A. Yup.</p> <p>21 Q. Then it's Jack Clark, director.</p> <p>22 A. Yup.</p> <p>23 Q. Then the next page, Fred DeBeer,</p> <p>24 director, and Harry McCoy, director.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 164</p> <p>1 Q. Okay. Now, having looked at that</p> <p>2 signature page and its reference to the requirements</p> <p>3 regarding signatures, does that help refresh your</p> <p>4 recollection as to whether or not a publicly filed</p> <p>5 registration statement of a company wishing to</p> <p>6 undertake an initial public offering, that it's</p> <p>7 required to be signed by the officer and the director</p> <p>8 of the company?</p> <p>9 A. Wait, and I apologize, I don't mean to --</p> <p>10 it doesn't refresh my knowledge. I'm not familiar with</p> <p>11 the specific code of Securities Act of 1933 that says</p> <p>12 this has to be done, so.</p> <p>13 Q. Did you have an understanding -- go</p> <p>14 ahead, I'm sorry.</p> <p>15 A. Nothing. I mean, if you're saying that's</p> <p>16 what the law is, that's what the law is. I'm not</p> <p>17 saying it is or isn't. I don't know it.</p> <p>18 Q. And you didn't know it then?</p> <p>19 A. I didn't know it then and I still don't</p> <p>20 know the --</p> <p>21 Q. Are you, were you aware of the fact that</p> <p>22 in November 2015 as to, the fact that the board of</p> <p>23 directors of Inpellis approved the filing of that</p> <p>24 November 9th draft for the next day on November 10th,</p> <p>25 are you aware, were you aware of it then?</p>	<p style="text-align: right;">Page 165</p> <p>1 A. I don't recall, no.</p> <p>2 Q. Are you aware of it now?</p> <p>3 A. No.</p> <p>4 Q. I'm going to show you Plaintiff's Exhibit</p> <p>5 31. Do you see that? Okay. And the front page, dated</p> <p>6 November 10th, 2015, do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And I'm going to go to the, this is what</p> <p>9 was actually filed on November 10th, and I'm going to</p> <p>10 show you this page three of it. Do you say -- do you</p> <p>11 see where it says, "this is an initial public offering</p> <p>12 of blank shares"?</p> <p>13 A. Yes.</p> <p>14 Q. And do you see down below it says, "The</p> <p>15 underwriters are selling the shares of common stock in</p> <p>16 this offering on a best efforts basis." Do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. So between November 9th, 2015, when the</p> <p>20 board of directors approved the filing of the November</p> <p>21 9th draft that we've just gone over, which said it was</p> <p>22 a firm commitment offering, and November 10th, the</p> <p>23 actual document that was filed was actually not a firm</p> <p>24 commitment offering but a best efforts offering, do you</p> <p>25 see that?</p>

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<p style="text-align: right;">Page 166</p> <p>1 A. I, I see the difference in the documents,</p> <p>2 yes.</p> <p>3 Q. Okay. Did you know at that period of</p> <p>4 time that in fact at the last minute the Inpellis</p> <p>5 registration statement that was filed as a publicly</p> <p>6 filed S-1 had gone from, was changed from a firm</p> <p>7 commitment to a best efforts offering, did you have</p> <p>8 that understanding at any time in November of 2015?</p> <p>9 A. I don't recall.</p> <p>10 MR. WARD: Objection, it assumes facts</p> <p>11 not in the record.</p> <p>12 MR. SCHLICHTMANN: I'm sorry, there,</p> <p>13 Bryan?</p> <p>14 MR. WARD: It assumes facts not in the</p> <p>15 record.</p> <p>16 MR. SCHLICHTMANN: Okay. All right.</p> <p>17 Q. Well, you see that there's a difference</p> <p>18 between the November 9th draft that the board approved</p> <p>19 on November 9th, which said it was firm, for a firm</p> <p>20 commitment, and you see this that was actually filed,</p> <p>21 this registration statement actually publicly filed on</p> <p>22 November 10th, you see they are different, right?</p> <p>23 A. I just want to clarify.</p> <p>24 Q. Yeah.</p> <p>25 A. You're telling me the board approved</p>	<p style="text-align: right;">Page 167</p> <p>1 that. You haven't -- I haven't seen -- I don't know or</p> <p>2 haven't seen -- I'm just --</p> <p>3 Q. All right. I'm going to represent to you</p> <p>4 that the board minutes for November 9th show that the</p> <p>5 board approved, was presented the November 9th draft</p> <p>6 that we -- that was Exhibit 34, which was a firm</p> <p>7 commitment draft, that they, the minutes show it was</p> <p>8 approved by the board on November 9th for filing the</p> <p>9 next day. I want you to assume that that's true.</p> <p>10 A. Okay.</p> <p>11 Q. The document that was filed on November</p> <p>12 10th is this document, Exhibit 31, 31, all right. And</p> <p>13 this is not a firm commitment, this is a best efforts</p> <p>14 filing. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you know at any time in November that</p> <p>17 the filing that was actually made on November 10th</p> <p>18 regarding the Inpellis offering was filed as a best</p> <p>19 efforts offer, did you ever, did that ever come to your</p> <p>20 attention then?</p> <p>21 A. In November?</p> <p>22 Q. Of 2015.</p> <p>23 A. The whole month?</p> <p>24 Q. Yes. Any time during that month.</p> <p>25 A. I don't recall specifically knowing when,</p>
<p style="text-align: right;">Page 168</p> <p>1 but it was publicly filed.</p> <p>2 Q. Okay. But do you have some memory of it</p> <p>3 coming to your attention that it was filed as a best</p> <p>4 efforts offering?</p> <p>5 A. I don't recall if I knew it was filed on</p> <p>6 a best efforts basis or not.</p> <p>7 Q. Is it news to you as you sit here today</p> <p>8 that it was filed on November 10th as a best efforts</p> <p>9 offering?</p> <p>10 A. No.</p> <p>11 Q. It's not news to you?</p> <p>12 A. No. Because I -- subsequent to</p> <p>13 September -- November 10th it was public and I saw it.</p> <p>14 Q. Okay. So you remember seeing it somehow,</p> <p>15 under some circumstances?</p> <p>16 A. Yes. Publicly on the -- as I recall,</p> <p>17 publicly on the SEC website.</p> <p>18 Q. You have a memory of actually seeing it</p> <p>19 on the public, on the EDGAR, on the public system --</p> <p>20 A. I don't recall. I don't recall --</p> <p>21 Q. -- the SEC public system?</p> <p>22 A. -- specifically when, but yes.</p> <p>23 Q. Do you have any memory of being surprised</p> <p>24 by that when you saw it or not being surprised?</p> <p>25 A. I have no recollection of being surprised</p>	<p style="text-align: right;">Page 169</p> <p>1 or not surprised.</p> <p>2 Q. Do you have any reason to believe that</p> <p>3 you, before seeing it on the SEC system as a publicly</p> <p>4 filed document, do you have any memory of knowing</p> <p>5 beforehand, before you saw it, that it was filed as a</p> <p>6 best efforts offer?</p> <p>7 A. I don't have a recollection specifically</p> <p>8 knowing or not knowing.</p> <p>9 Q. Your first memory is seeing it on the SEC</p> <p>10 system publicly after it was filed?</p> <p>11 A. No, that's not what I -- I apologize,</p> <p>12 that's not what I said. I don't have a recollection of</p> <p>13 seeing it, necessarily seeing it before or after. But</p> <p>14 I do have a recollection of seeing it after it was</p> <p>15 filed.</p> <p>16 Q. On the SEC system as a publicly filed</p> <p>17 document?</p> <p>18 A. Correct.</p> <p>19 Q. All right. But my question, and my</p> <p>20 question now is, do you have any memory of the, that</p> <p>21 you knew before you saw it on the SEC public system,</p> <p>22 any memory of knowing that it was -- had been filed as</p> <p>23 a best efforts, or is that your first memory of knowing</p> <p>24 that it was filed as best efforts?</p> <p>25 A. I don't recall. As I said, I don't</p>

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<p style="text-align: right;">Page 170</p> <p>1 recall.</p> <p>2 Q. Do you have any memory of being told or</p> <p>3 informed in any way other than your seeing it on the</p> <p>4 SEC public system?</p> <p>5 A. Again, I don't recall whether it was</p> <p>6 before or after it was filed publicly.</p> <p>7 Q. Right, but I'm asking do you have any</p> <p>8 memory at all of any kind?</p> <p>9 A. I don't recall. I don't recall the</p> <p>10 specific -- you're asking for a, I apologize, you're</p> <p>11 asking for a very specific date a very long time ago</p> <p>12 and I can't tell you if it was this day or that today.</p> <p>13 Q. Now, I understand, but I, because it's</p> <p>14 important let me just --</p> <p>15 A. Yes, yeah.</p> <p>16 Q. Again, you know, I don't mean to press</p> <p>17 you on it, but I do want us to be clear. You do have a</p> <p>18 memory of seeing it on the public system, which means</p> <p>19 you, when you saw it, it had already been filed;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. All right. And in fact there's a lag</p> <p>23 time, isn't there, between actually filing it</p> <p>24 physically and it showing up on the public system; is</p> <p>25 that true?</p>	<p style="text-align: right;">Page 171</p> <p>1 A. I don't --</p> <p>2 Q. -- Is that your --</p> <p>3 A. I don't know specific lag times or not.</p> <p>4 Q. Okay. But you do remember, you do have a</p> <p>5 memory of seeing it on the system?</p> <p>6 A. Yes. But I don't recall when I saw it</p> <p>7 the first time on the system.</p> <p>8 Q. Okay. But any, but the, but any time you</p> <p>9 see it on the public system it had already, it had to</p> <p>10 have already been filed or it wouldn't be on the public</p> <p>11 system; correct?</p> <p>12 A. Yes. By definition I, I believe that to</p> <p>13 be correct. I don't know how it can get on a public</p> <p>14 system without being filed on the public system.</p> <p>15 Q. Okay. And what I'm asking now is, do you</p> <p>16 have any memory as you're here today, any memory of</p> <p>17 ever knowing for any reason that the filing that was</p> <p>18 made of the Inpellis registration S-1 was a best</p> <p>19 efforts filing, any memory of knowing that prior to</p> <p>20 your seeing it on the public system?</p> <p>21 A. Again, I apologize, I just don't have a</p> <p>22 specific memory or not specific memory, I just don't</p> <p>23 recall.</p> <p>24 Q. Well, so is it fair to say when you say</p> <p>25 you don't have a specific memory, you don't have any</p>
<p style="text-align: right;">Page 172</p> <p>1 memory, right, general or otherwise?</p> <p>2 A. Correct. However, I just can't recall</p> <p>3 specifically.</p> <p>4 Q. Right.</p> <p>5 A. Specifically seven years ago.</p> <p>6 Q. I'm asking for your memory. I'm asking</p> <p>7 for your memory. Okay, I want to be very clear. I'm</p> <p>8 asking for your memory. You either have some memory or</p> <p>9 you don't. And what you have told us, and I want to be</p> <p>10 fair here, is that you do have a memory of seeing it on</p> <p>11 the public system, which means you saw it, when you saw</p> <p>12 it on the public system it was after it was filed, you</p> <p>13 do have a memory of that --</p> <p>14 A. Yes.</p> <p>15 Q. -- correct?</p> <p>16 But you don't have any memory of knowing</p> <p>17 beforehand, that you don't have, you don't have such a</p> <p>18 memory?</p> <p>19 A. I don't recall seeing it beforehand.</p> <p>20 Q. Right. But I want to, and I understand</p> <p>21 recall, but when we say recall you mean you don't have</p> <p>22 any memory of it; is that right?</p> <p>23 A. I don't, as of right now I don't have a</p> <p>24 memory of seeing it.</p> <p>25 Q. Prior to seeing it on the public system?</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Correct. I just don't have a memory of</p> <p>2 it.</p> <p>3 Q. All right. Now, we said seeing. I want</p> <p>4 to be very clear here. You had no indication -- you</p> <p>5 have no memory of having any indication, you don't have</p> <p>6 a memory now of having any indication prior to your</p> <p>7 seeing it, I just want to be very clear here; is that</p> <p>8 right?</p> <p>9 A. I --</p> <p>10 MR. WARD: Just objection, vague.</p> <p>11 MR. SCHLICHTMANN: Al right, so I don't</p> <p>12 want to be vague.</p> <p>13 Q. And I'll move on, but I just want to be</p> <p>14 clear here, is that as you sit here today you do</p> <p>15 remember seeing it on the public system, but you don't</p> <p>16 have any memory, general or specific, of having, of</p> <p>17 knowing or having an inclination or an indication of</p> <p>18 any kind that it had been filed as a best efforts; is</p> <p>19 that true?</p> <p>20 A. I, I don't recall seeing it, but I'm not</p> <p>21 saying I didn't. All right, and I apologize. It -- so</p> <p>22 like earlier when you showed me an email that I got and</p> <p>23 you said do you remember this email, I said no, I don't</p> <p>24 recognize -- that doesn't mean -- and then I, I can't</p> <p>25 remember, but to give an example I said well, it looks</p>

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<p style="text-align: right;">Page 174</p> <p>1 like I got that email, right?</p> <p>2 Q. That's right. But right now I'm only,</p> <p>3 and I appreciate that.</p> <p>4 A. So again, I'm not trying to be evasive</p> <p>5 or, you know, I just don't recall. It's not saying I</p> <p>6 didn't see it. I just don't recall as we sit right now</p> <p>7 seeing it before it was whatever you asked, yeah.</p> <p>8 Q. Okay. As we sit, as you sit here today</p> <p>9 have you seen anything, any document or received any</p> <p>10 information from any person indicating to you that you</p> <p>11 were aware prior to seeing it on the public system that</p> <p>12 the Inpellis S-1 was filed as a best efforts?</p> <p>13 A. I do not recall seeing it.</p> <p>14 Q. Okay, you say seeing. I want to be very</p> <p>15 specific here.</p> <p>16 A. I don't recall your whatever you just</p> <p>17 said.</p> <p>18 Q. All right. Well, let me state it again,</p> <p>19 because it's important, all right, because the word</p> <p>20 "seeing". And I'm not about seeing because you've made</p> <p>21 clear you didn't see it, you only saw it on the public</p> <p>22 system. What I'm asking is a different question. Have</p> <p>23 you, up until now, seen any document or received</p> <p>24 information from anyone, okay, some factual piece of</p> <p>25 information that indicates to you or indicates that you</p>	<p style="text-align: right;">Page 175</p> <p>1 were aware at the time that it was filed or previously</p> <p>2 that the Inpellis S-1 was going to be filed or at the</p> <p>3 time of filing was filed as a best efforts?</p> <p>4 MR. WARD: I'm going to object.</p> <p>5 MR. SCHLICHTMANN: All right, again.</p> <p>6 It's a terrible question. All right, again.</p> <p>7 MR. WARD: Hey, Jan, do you want to, I</p> <p>8 don't know.</p> <p>9 MR. SCHLICHTMANN: Yeah, go ahead.</p> <p>10 MR. WARD: Do you want to keep going or</p> <p>11 stop, I just want to see sort of, it's been an</p> <p>12 hour and a half, I guess an hour and forty since</p> <p>13 lunch, I just wanted to see how much longer you</p> <p>14 had.</p> <p>15 MR. SCHLICHTMANN: I'm going to be</p> <p>16 wrapping up. I'm wrapping up, I'm in the wrap up</p> <p>17 stage here, it's not going to be much longer, all</p> <p>18 right?</p> <p>19 MR. WARD: Okay.</p> <p>20 MR. SCHLICHTMANN: Yeah.</p> <p>21 Q. So again just trying, have you seen</p> <p>22 anything or received any factual information, orally or</p> <p>23 in writing, that indicates to you that you were made</p> <p>24 aware as of the filing of this document, prior to its</p> <p>25 actual filing on November 10th, this S-1, that you were</p>
<p style="text-align: right;">Page 176</p> <p>1 made aware that it was going to be filed as a best</p> <p>2 efforts as opposed to a firm commitment offering, or</p> <p>3 you have not seen any factual information orally, in</p> <p>4 writing or prior to today?</p> <p>5 A. I have not --</p> <p>6 MR. WARD: Objection. Excuse me.</p> <p>7 Q. -- specifically -- sorry.</p> <p>8 MR. SCHLICHTMANN: Sorry, what?</p> <p>9 MR. WARD: Objection, but you can go</p> <p>10 ahead, you can answer if you --</p> <p>11 A. So no, I just don't recall. I apologize,</p> <p>12 I don't recall.</p> <p>13 Q. Okay. It's not a recall question, all</p> <p>14 right? It's very specific. I'm asking if you were</p> <p>15 shown a piece of paper, saw a piece of paper, all</p> <p>16 right, or you received orally information from someone,</p> <p>17 some fact that indicates that you were made aware prior</p> <p>18 to the Inpellis S-1 filing on November 10th that the</p> <p>19 Inpellis S-1 filing was going to be filed as a best</p> <p>20 efforts filing as opposed to a firm commitment</p> <p>21 offering.</p> <p>22 A. Again, I literally don't recall.</p> <p>23 Q. Again, I'm not --</p> <p>24 MR. WARD: Could we have, maybe have a</p> <p>25 five minute break, and --</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. SCHLICHTMANN: Sure, go ahead, yup,</p> <p>2 great.</p> <p>3 THE VIDEOGRAPHER: We're going of the</p> <p>4 record. The time is 3:27 p.m.</p> <p>5 (Recess taken)</p> <p>6 THE VIDEOGRAPHER: We're back on the</p> <p>7 record. The time is 3:39 p.m.</p> <p>8 MR. SCHLICHTMANN: Okay.</p> <p>9 BY MR. SCHLICHTMANN:</p> <p>10 Q. Let me ask the question one last time,</p> <p>11 all right. You, have you prior to today, as of up to</p> <p>12 today have you received any factual information or seen</p> <p>13 any kind of record, when it's in paper or electronic,</p> <p>14 that would indicate that you were aware prior to the</p> <p>15 filing of the Inpellis S-1 that it was being filed as a</p> <p>16 best efforts offering as opposed to a firm commitment</p> <p>17 offering?</p> <p>18 A. No.</p> <p>19 Q. Okay. Now, I'm going to show you, this</p> <p>20 is Exhibit 46. Okay. Okay. And we're almost done,</p> <p>21 Mr. Gazdak, I appreciate your patience. I'm showing</p> <p>22 now you Plaintiff's Exhibit 46, all right, and ask if</p> <p>23 you examine that. Have you, prior to today have you</p> <p>24 seen this document dated November 30th from the SEC</p> <p>25 regarding the Inpellis offering?</p>

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<p style="text-align: right;">Page 178</p> <p>1 A. I, I don't recall. I just have to look 2 through it.</p> <p>3 Q. Yeah, look it through, please.</p> <p>4 THE VIDEOGRAPHER: Yeah, you can take 5 control now.</p> <p>6 (Witness perusing documents)</p> <p>7 A. Okay, thank you. Can you repeat your 8 question?</p> <p>9 Q. Yes. Have you, have you ever recall 10 seeing this document prior, Plaintiff's Exhibit 46, 11 prior to today?</p> <p>12 A. I, I don't recall seeing it, no, but, 13 like other emails, I don't recall it, seeing this --</p> <p>14 Q. All right.</p> <p>15 A. -- specific document.</p> <p>16 Q. Okay. Now, this is not an email, just to 17 be clear, this is an official letter from the SEC dated 18 November 30th, 2015, and it goes to Inpellis's lawyer, 19 it says "care of Anthony Marsico", and it says on 20 direct. And it is a letter that says, "To whom it may 21 concern, please be advised that the Securities and 22 Exchange Commission has issued an order directing a 23 private investigation and examination, and designated 24 officers to take testimony, issued pursuant to Sections 25 20(a) and 8(e) of the Securities Act of 1933, and</p>	<p style="text-align: right;">Page 179</p> <p>1 Section 21(a) of the Securities Exchange Act of 1934, 2 with respect to the Form S-1 registration statement 3 (S-1) filed by Inpellis Inc." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it says, "While the Section 8(e) 6 examination is pending, the Division of Corporate 7 Finance will not take any further action on the S-1, 8 and all communication should be made to the 9 Commission's Office of Enforcement in its Boston 10 Regional office at the address above, to the attention 11 of Michael C. Moran." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And then it says that, "Please be advised 14 that Section 5(c) of the Securities Act provides that 15 it shall be unlawful for any person, directly or 16 indirectly, to make use of any means or instruments of 17 transportation or communication in interstate 18 commerce", et cetera, to offer sell or offer to buy 19 through the use or medium of any prospectus or 20 otherwise any security, unless a registration statement 21 has been filed as to such security, or while the 22 registration statement is the subject of a refusal 23 order or stop order, prior to the effective date of the 24 registration statement."</p> <p>25 So now having had an opportunity to look</p>
<p style="text-align: right;">Page 180</p> <p>1 at that, do you remember, is it your memory that at 2 some point after the public filing of the Inpellis S-1 3 that the SEC issued a stop order and undertook an 4 investigation of the filing of the S -- of the Inpellis 5 S-1?</p> <p>6 A. I don't know the timing of any such SEC 7 investigations being before or after.</p> <p>8 Q. Do you remember it happening after the 9 filing of the S-1 on November 10th?</p> <p>10 A. That there -- your question is?</p> <p>11 Q. Do you have any memory that the SEC 12 instituted a stop order on the Inpellis S-1 and, and 13 ordered an investigation of its filing in the, after 14 the S-1 was filed on November 10th, do you have any 15 memory of that happening?</p> <p>16 A. I have -- I don't recall when, but I, at 17 some point I was made aware of the substance of this, 18 what appears to be this, this communication.</p> <p>19 Q. Which is Plaintiff's Exhibit 46, the 20 November 30, 2015 SEC notice of a stop order and 21 investigation?</p> <p>22 A. Correct, I was made aware of that. I was 23 not aware or don't know the other part of your 24 question.</p> <p>25 Q. Which is?</p>	<p style="text-align: right;">Page 181</p> <p>1 A. I think you referenced that an SEC 2 investigation or something to that effect happened 3 after the public filing.</p> <p>4 Q. Okay. So let me make sure.</p> <p>5 A. I just want to, if you want to, yeah, if 6 you want to clarify or --</p> <p>7 Q. Okay. So let me just make sure I 8 understand. Do you have a memory that after November 9 10th, 2015 when this Inpellis S-1 was filed publicly, 10 that at some point after that filing on November 10th, 11 2015, that the SEC issued a stop order and an 12 investigation, as indicated on Plaintiff's Exhibit 46, 13 this November 30th, 2015 letter from the SEC?</p> <p>14 A. Sorry, I'm rereading the letter.</p> <p>15 (Witness perusing documents)</p> <p>16 A. As mentioned, I am aware of this after 17 the public filing that the SEC had, had these concerns. 18 I don't recall if it was this certain letter I was 19 shown or, I don't recall, but I became aware. I can't 20 say whether -- when the SEC started their 21 investigation. I don't know that.</p> <p>22 Q. Oh, I see, prior to this date you mean, 23 is that what you mean?</p> <p>24 A. I don't -- yeah, you're -- I apologize.</p> <p>25 I took the question to say I'm saying I remember the</p>

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<p style="text-align: right;">Page 182</p> <p>1 SEC starting an investigation after the public filing. 2 What I'm saying is, I don't know when the SEC started 3 their investigation of Inpellis or whatever this letter 4 is. But I am aware after the public filing that these, 5 the contents of this letter, whether I saw this letter 6 specifically or not, was made aware to me at some other 7 time. Does that make sense? I apologize if that's -- 8 Q. No, no, I appreciate the -- so do you 9 have any reason to believe that the SEC started the 10 investigation that culminated in this stop order and 11 investigation letter prior to the November 10th, 2015 12 filing of the S-1, any reason to believe that that 13 happened? 14 A. No. 15 Q. All right. So as far as you know, it 16 happened after the filing on November 10th, 2015? 17 A. I don't know when it happened, before or 18 after. 19 Q. Okay. But you don't, you didn't receive 20 any information, you haven't received any information 21 indicating whether it was before November 10th, 2015? 22 MR. WARD: You dropped out, your audio 23 dropped out. 24 MR. SCHLICHTMANN: Yup, yup, okay. We're 25 almost there, by the way.</p>	<p style="text-align: right;">Page 183</p> <p>1 Q. I just want to be clear here. Do you 2 have any information, okay, as you sit here today that 3 the SEC investigation regarding the S-1, regarding the 4 Inpellis registration statement that is referenced in 5 this Exhibit 46 began sometime before the filing of the 6 November 10th S-1? 7 A. No, I don't know. 8 Q. All right. You have no such information? 9 A. Correct. 10 Q. I'm going to show you, and this is, this 11 is, we really are near the end here, and I appreciate 12 your patience. 13 MR. SCHLICHTMANN: I'm not quite sure how 14 this exhibit is going to present itself, but I'm 15 going to, we have created PDFs of the 16 attorney-client privilege log that has been 17 produced. And can we bring up the first one? 18 Now, it's really tiny. Can we blow it up so he's 19 going to be able to, can we blow it up a little 20 bit more, we can always scroll. Okay, that's 21 better, all right. 22 Q. This is the -- 23 MR. WARD: Jan, before you get into this 24 I just want to say that we are, I'm going to 25 instruct my client not to reveal any privileged</p>
<p style="text-align: right;">Page 184</p> <p>1 information, and that's -- 2 MR. SCHLICHTMANN: Yes. And I'm not 3 going to be asking him to, okay? So I appreciate 4 that, I respect that. I'm not going to be asking 5 him questions about what happened during these 6 meetings, that's -- okay? So if that's what 7 you're asking, I'm not going to be doing that. 8 MR. WARD: Okay. 9 MR. SCHLICHTMANN: Okay? 10 Q. So these, this is one of two 11 attorney-client privilege logs. So you know what an 12 attorney-client privilege log is, right? 13 A. No. 14 Q. Okay. Well, I'm going to represent to 15 you that it's a log of any communications that occurred 16 between attorney and client that are privileged and 17 therefore are not to be shared, you know, outside the 18 attorney-client relationship, okay? And I'm not going 19 to be asking you any questions about any 20 attorney-client privileges, any attorney-client or 21 privileged attorney-client conversations or 22 discussions, all right? But I am, I do want you to 23 look at the log, if you can see it. 24 MR. SCHLICHTMANN: I move it like that? 25 THE VIDEOGRAPHER: Mm-hmm.</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. All right. And I'm going to, I'm going 2 to show you that on this log that there are 3 communications that occurred that are listing -- that 4 identify yourself and Mr. Mooney, for instance, this is 5 March 19th, 2015, do you see that? And it's between, 6 and it involves Greenberg Traurig and Mr. Mooney and 7 yourself. And it says form of -- the subject matter is 8 the form of the underwriting agreement. Do you see 9 that? 10 A. Yes. 11 Q. Okay. All right. So here's another one 12 on April 8th. Your name is there with Mr. Mooney and 13 Mr. Carlin. Do you see that? 14 A. Yes. 15 Q. Okay, all right. And it's about the 16 FINRA, the subject is the FINRA public offering filing. 17 Do you see that? 18 A. Yes. 19 Q. Okay. And then we have additional ones 20 here, this is communications having to do with May 21 15th, 2015 involving yourself, Mr. Mooney and 22 Mr. Carlin and Greenberg, and the subject is the 23 unreasonable letter filing. Do you see that? 24 A. Yes. 25 Q. Okay. And then, I'm going to go to the</p>

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<p style="text-align: right;">Page 186</p> <p>1 next one now. Well, let me just, let me just ask it 2 this way. Does -- do you recall any meetings, 3 conferences that you attended or telephone conference 4 calls that you had, not emails, okay, where you were 5 named on, but do you have any memory of any telephone 6 conference calls or meetings, physical meetings in 7 which the -- that are -- that were involving Alexander 8 Capital people that were not -- that did not involve 9 your attorneys in any way, these are Capital, Alexander 10 Capital conference -- conferences either on the phone 11 or meetings that Alexander Capital people had regarding 12 the filing of the, the Alexander Capital application 13 that resulted in the unreasonable letter that we went 14 over, or the filing of the fee, excuse me, the filing 15 of the 1017 application, do you remember having any 16 conference, conferences on the phone or in meetings 17 with Alexander Capital people that did not involve your 18 lawyers, Greenberg Traurig, or other lawyers 19 representing Alexander Capital during this period? 20 A. I apologize, I -- I -- I don't recall, 21 you know, at all specifics or -- or generally. I mean, 22 I -- such a -- I don't remember. 23 Q. Okay. And just to be clear, you don't 24 have any recollection of attending a meeting involving 25 Alexander Capital people or having a telephone</p>	<p style="text-align: right;">Page 187</p> <p>1 conference call involving Alexander Capital people 2 which did not involve attorneys, okay, so I'm just 3 asking for Alexander Capital conference calls involving 4 Alexander Capital people or meetings involving 5 Alexander Capital people which involved yourself, in 6 which the application to FINRA for the approval 7 of -- for the approval of its intended fee for the 8 Inpellis offering was discussed; is that true? Did I 9 lose you? 10 A. No, no, you didn't lose me. 11 Q. Oh, okay. 12 A. No, no. 13 I, I don't, I mean, it's such a large 14 swath of statement, I don't recall specifically having 15 them or not having them. 16 Q. Well, I'm asking what you recall. 17 A. Yeah. I, I don't recall. I mean, I 18 don't know and I don't -- I don't recall. If you would 19 show me that a call happened, okay, yeah. But I don't 20 recall. 21 Q. All right. Well, I'm asking about your 22 memory, all right. And, and I'm just going to ask you 23 a series and the -- do you have any memory of any 24 telephone conference calls or telephone calls or 25 meetings involving yourself and Alexander Capital</p>
<p style="text-align: right;">Page 188</p> <p>1 people, not involving attorneys, just involving 2 Alexander Capital people and yourself, either on the 3 phone or in a physical meeting in which the, the 4 FINRA's unreasonable letter was discussed? 5 A. Just internally -- 6 Q. Yes. 7 A. -- you're saying, without any -- 8 Q. Lawyers. 9 A. Lawyers. 10 Q. Correct. 11 A. I mean, I don't recall -- I don't recall. 12 I mean, I really, I don't recall a -- I can't in my 13 memory, say oh, yeah, I clearly remember this 14 conversation happening without attorneys. I apologize, 15 I just don't. 16 Q. Okay. You have no memory of any, of any 17 calls or conferences, meetings that you had with 18 Alexander, internally meeting with Alexander Capital 19 people in which the unreasonable letter was discussed; 20 correct? 21 A. Correct. 22 Q. Okay. And do you have any memory of any 23 telephone calls or physical meetings with Alexander 24 Capital people in which the application for a firm 25 commitment authorization from FINRA was discussed?</p>	<p style="text-align: right;">Page 189</p> <p>1 A. With or without lawyers? 2 Q. Not lawyers. I want to be very clear. 3 The series of questions I'm asking you are involving 4 Alexander Capital people, you used the phrase 5 "internally", meaning not involving lawyers outside the 6 company. I don't think you have a general counsel. 7 But let me be very clear. I'm only asking about 8 meetings or telephone calls that involved you and other 9 Alexander Capital people regarding the subject matters, 10 that's what I'm asking. Not involving the lawyers. 11 A. Okay. I don't recall you had asked 12 specifically about, I believe, firm commitment 13 underwritings. 14 Q. Yes. 15 A. I don't recall having conversations 16 internally without counsels on the phone about that. 17 Q. Okay. All right. And Mr. Gazdak, having 18 had the opportunity now over these last several hours, 19 and I appreciate the time that you have spent, you 20 know, doing this, in going over this information today 21 that we went over, does having gone over that 22 information, do you now have a, an understanding that 23 you did not have previously regarding the Alexander 24 Capital's underwriting of the Inpellis offering that 25 you did not have previously?</p>

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<p style="text-align: right;">Page 190</p> <p>1 A. No.</p> <p>2 Q. Okay. And as you sit here today and</p> <p>3 having gone over all this information, do you believe</p> <p>4 that, do you have a belief as to whether or not</p> <p>5 Alexander Capital comported itself, conducted itself</p> <p>6 regarding the Inpellis, the Alterix/Inpellis offering,</p> <p>7 in a manner that is consistent with its obligations as</p> <p>8 an investment bank?</p> <p>9 A. Obligations --</p> <p>10 MR. WARD: Objection. Calls for</p> <p>11 information outside of personal knowledge.</p> <p>12 MR. SCHLICHTMANN: I'm sorry, Bryan?</p> <p>13 MR. WARD: Just objection, it's</p> <p>14 confidential information outside of personal</p> <p>15 knowledge.</p> <p>16 MR. SCHLICHTMANN: Outside his personal</p> <p>17 knowledge. Okay.</p> <p>18 Q. All right. Having gone through all this</p> <p>19 information today that we did over these last several</p> <p>20 hours, let me ask you this. Prior to today did you</p> <p>21 have a belief as to whether or not Alexander Capital</p> <p>22 conducted itself regarding the Inpellis offering in</p> <p>23 accordance with the rules and regulations applying to</p> <p>24 it under FINRA's membership requirements?</p> <p>25 A. I -- I -- I don't know what, as</p>	<p style="text-align: right;">Page 191</p> <p>1 previously stated, I don't know what those requirements</p> <p>2 are from FINRA.</p> <p>3 Q. As you, after -- okay. Having gone</p> <p>4 through all this material and information today, do you</p> <p>5 have a belief as to whether or not Alexander Capital</p> <p>6 during this period of time conducted itself as an</p> <p>7 investment bank in accordance with the rules and</p> <p>8 regulations of its membership in FINRA?</p> <p>9 A. Again, and I'm not Trying to be</p> <p>10 difficult, I don't know the rules and regulations of</p> <p>11 its membership agreement with FINRA, so I can't say</p> <p>12 whether we did or didn't.</p> <p>13 Q. After going through this information</p> <p>14 today, do you have a belief as to whether Alexander</p> <p>15 Capital conducted itself in a honest manner regarding</p> <p>16 the Inpellis offering?</p> <p>17 A. I don't know about the rest of Alexander</p> <p>18 Capital. I only know about my -- what I know.</p> <p>19 Q. Okay. Based on what you know.</p> <p>20 A. From my recollection, my answer would be</p> <p>21 yes, from what I know.</p> <p>22 Q. Regarding your own conduct?</p> <p>23 A. Correct.</p> <p>24 Q. And not regarding you don't --</p> <p>25 A. I just can't speak to -- I don't, I don't</p>
<p style="text-align: right;">Page 192</p> <p>1 know what other people at the firm did or didn't do.</p> <p>2 Q. And based on the information that we went</p> <p>3 over today, do you have a belief as to whether the</p> <p>4 other people involved with Alexander Capital conducted</p> <p>5 themselves in an honest manner regarding the Inpellis</p> <p>6 offering or not?</p> <p>7 A. I can't say. I don't know.</p> <p>8 Q. All right, thank you.</p> <p>9 MR. SCHLICHTMANN: Bryan, that completes</p> <p>10 my examination. I really appreciate, Mr. Gazdak,</p> <p>11 the time you spent today. You were very patient</p> <p>12 and I appreciate your answering the questions</p> <p>13 today.</p> <p>14 Bryan, is that, did you have anything</p> <p>15 else you wanted to say?</p> <p>16 MR. WARD: I have no questions.</p> <p>17 MR. SCHLICHTMANN: Okay. Thank you very</p> <p>18 much. And do we have, now, Bryan, do I have to</p> <p>19 make any kind of incantation about the exhibits</p> <p>20 here to make them part of the record? They are</p> <p>21 part of the record, right, do you agree with</p> <p>22 that?</p> <p>23 MR. WARD: Are we talking about the</p> <p>24 exhibits that were referenced or --</p> <p>25 MR. SCHLICHTMANN: Yes, yeah, the ones</p>	<p style="text-align: right;">Page 193</p> <p>1 that I referenced, yes. Not the ones --</p> <p>2 MR. WARD: I have no issue with those</p> <p>3 being part of the record, no.</p> <p>4 MR. SCHLICHTMANN: They're part of the</p> <p>5 record, I don't have to say something special</p> <p>6 about it, right, we agree that the exhibits that</p> <p>7 were referenced are part of this record</p> <p>8 examination of the witness?</p> <p>9 MR. WARD: Sure, that works for me.</p> <p>10 MR. SCHLICHTMANN: Okay.</p> <p>11 MR. WARD: We don't need anything else.</p> <p>12 MR. SCHLICHTMANN: Okay, great, I</p> <p>13 appreciate that.</p> <p>14 Any, any other comments? All right, I am</p> <p>15 completed my examination of the witness. And</p> <p>16 again, thank you very much for being patient.</p> <p>17 THE VIDEOGRAPHER: Okay, we are going off</p> <p>18 the record, and the time is 4:06 p.m.</p> <p>19 (Time noted: 4:06 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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